

(2012) 02 AHC CK 0099

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 34662 of 2003

Syed Mustajab Husain, Mutwalli Masjid Dhuliaganj, Waqf No. 23, Agra **APPELLANT**

Vs

Additional District Judge, Agra and Others **RESPONDENT**

Date of Decision : 23-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 5
Evidence Act, 1872 — Section 58
Provincial Small Cause Courts Act, 1887 — Section 25, 25
Transfer of Property Act, 1882 — Section 106, 106, 111, 112
Uttar Pradesh Muslim Waqfs (Amendment) Act, 1995 — Section 3, 32(2), 50, 56, 87
Uttar Pradesh Muslim Waqfs Act, 1960 — Section 15(2), 19(2), 32, 49A, 57A
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(1), 2(1), 21(1)
Waqf Act, 1954 — Section 15, 15, 15(2)
Waqf Act, 1995 — Section 30, 32, 32(1), 36, 37
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(1), 2(1), 21(1)
Waqf Act, 1954 — Section 15, 15, 15(2)
Waqf Act, 1995 — Section 30, 32, 32(1), 36, 37
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 5
Evidence Act, 1872 — Section 58
Provincial Small Cause Courts Act, 1887 — Section 25, 25
Transfer of Property Act, 1882 — Section 106, 106, 111, 112
Uttar Pradesh Muslim Waqfs (Amendment) Act, 1995 — Section 3, 32(2), 50, 56, 87
Uttar Pradesh Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 —
Section 2(1), 2(1), 21(1)
Waqf Act, 1954 — Section 15, 15, 15(2)
Waqf Act, 1995 — Section 30, 32, 32(1), 36, 37
Civil Procedure Code, 1908 (CPC) — Order 8 Rule 3, Order 8 Rule 5
Evidence Act, 1872 — Section 58
Provincial Small Cause Courts Act, 1887 — Section 25, 25
Transfer of Property Act, 1882 — Section 106, 106, 111, 112
Uttar Pradesh Muslim Waqfs (Amendment) Act, 1995 — Section 3, 32(2), 50, 56, 87
Uttar Pradesh Muslim Waqfs Act, 1960 — Section 15(2), 19(2), 32, 49A, 57A
Uttar Pradesh Muslim Waqfs Act, 1960 — Section 15(2), 19(2), 32, 49A, 57A

Citation : (2012) 8 ADJ 726 : (2012) 6 AWC 6413

Hon'ble Judges : Dilip Gupta, J

Bench : Single Bench

Judgement

Hon"ble Dilip Gupta, J.—This petition, at the instance of the plaintiff, seeks the quashing of the judgment and order dated 19th July, 2003 by which the Revision filed by the defendants for setting aside the judgment dated 30th November, 2000 of the Court of Small Causes for ejectment of the defendants and for recovery of arrears of rent, was allowed and SCC Suit No. 65 of 1997 was dismissed.

2. The first issue that will arise for consideration in this petition is whether the plaintiff Wakf was a Wakf registered in accordance with the provisions of the Wakf Act, 1995 (hereinafter referred to as the "Wakf Act") because section 87 of the Wakf Act, provides that no suit for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of the Wakf Act shall be instituted. The plaintiff had made a specific averment in paragraph 1 of the plaint that the building including the disputed shop belonged to the Wakf which was registered in the office of the U.P. Sunni Central Waqf Board, Lucknow (hereinafter referred to as the "Board") as Wakf No. 23 but all that was stated in the written statement in reply to the averments made in paragraph 1 of the plaint was that the contents were not admitted for want of knowledge. It has, therefore, to be determined whether the averments made in paragraph 1 of the plaint stood admitted by the defendants in the absence of any specific denial in the Written Statement.

3. The second issue that will arise for consideration in this petition is whether the suit for ejectment and recovery of arrears of rent can be filed by the Mutawalli of the Wakf on behalf of the Wakf.

4. Syed Mustajab Husain, as Mutawalli of Masjid Dhuliyaganj, Wakf No. 23 Kotwali Ward Agra, 3, instituted SCC Suit No. 65 of 1997 for ejectment of the defendant Majeed Uddin (since deceased) from the shop and for recovery of arrears of rent. In paragraph 1 of the plaint it was asserted that the building bearing Municipal No. 21/170, situated at Mohalla, Dhuliyaganj, which consists of five shops on the ground floor and a Masjid on the first floor, is Wakf property and is registered with the Board as Wakf No. 23. It was further asserted in the plaint that Syed Mustajab Husain is the Mutawalli of the aforesaid Wakf No. 23 and is looking after the affairs of the Masjid and the building and as such is the landlord of the building; that the deceased defendant was the tenant of one shop bearing No. 21/170/2 on the ground floor on a monthly rent of Rs. 35; that the defendant did not pay rent since 1st September, 1993 despite repeated demands; that as the building including the shop situated in the building belongs to and is vested in the Wakf, The U.P. Urban Buildings (Regulation of Letting, Rent & Eviction) Act, 1972 (hereinafter referred to as the "Act") will not apply to the building in view of Section 2(1)(bbb) of the Act which was inserted w.e.f. 26th June, 1994 and despite service of notice on the defendant for termination of the tenancy, the defendant did not vacate the premises and nor did he pay the

arrears of rent.

5. The defendant Majeed Uddin filed a written statement. The averments made in paragraph 1 of the plaint, with the exception that property No. 21/170, Dhuliyaganj Agra, consisting of five shops on the ground floor and Masjid on the first floor, were not admitted for want of knowledge. It was further stated that Mustajab Husain claiming himself to be the Mutwalli used to realise the monthly rent of Rs. 36/- from the defendant who was a tenant of the Wakf; that the building was not exempted from the operation of the Act since the amendment made in the Act for exempting buildings belonging to or vested in a Wakf was made after the shop was given on rent; that the plaintiff had no right to sue; that the Wakf is a legal entity capable of suing and that the suit filed by Mustajab Husain was not maintainable.

6. The following points arose for consideration of the Judge, Court of Small Causes:

(1) Whether Syed Mustajab Husain, did not have the authority to institute the suit and whether the suit was not maintainable?

(2) Whether the Act was not applicable to the building?

(3) Whether the defendants had committed default in payment of rent?

(4) Whether the notice dated 18th March, 1997 was duly served and if so then whether, the notice is illegal?

(5) Relief ?

7. Point No. 1 was decided in favour of the plaintiff and it was held that the plaintiff could institute the suit as a Mutawalli of the Wakf. Point No. 2 was decided in favour of the plaintiff and it was held that the building was exempted from the operation of the Act. Point No. 3 was decided against the plaintiff and it was held that there was no default in payment of rent. Point No. 4 was decided in favour of the plaintiff and it was held that the tenancy of the defendant stood terminated on the expiry of the period mentioned in the notice dated 8th March, 1997 sent by the plaintiff which notice was duly served on the defendant and was legal. While deciding Point No. 5 it was held that the plaintiff was entitled to the relief of ejectment of the defendant since the tenancy stood terminated on the expiry of the period mentioned in the notice dated 18th March, 1997 sent u/s 106 of the Transfer of Property Act. The Suit for ejectment of the defendant was, accordingly, decreed by the Court of Small Causes on 30th November, 2000.

8. Feeling aggrieved, the defendants filed Revision No. 8 of 2001 u/s 25 of The Provincial Small Cause Courts Act, 1887. At the revisional stage, the defendants filed an application for amending the grounds of Revision by adding another ground that the Suit was barred by Section 87 of the Wakf Act since the Wakf was not registered under the provisions of the Wakf Act. The Revisional Court rejected the amendment application observing that this was a legal plea and

could be considered even if no such ground was taken in the Memo of Revision.

9. The Revision was ultimately allowed by the judgment and order dated 19th July, 2003 for the following reasons and the suit for ejectment of the defendant was dismissed.

(1) It has to be seen whether the Wakf was registered and whether the plaintiff could institute the suit.

(2) Section 87 of the Wakf Act creates a bar to the enforcement of right on behalf of an unregistered Wakf and though it may have been stated in the plaint that the Wakf was registered and the registration number was also mentioned and this averment was not specifically denied in the written statement, yet the Court of Small Causes should have examined whether the Wakf was registered or not. The plaintiff had not filed the registration certificate and the certificate of audit inspection which was filed by the plaintiff does not conclusively prove that the Wakf was registered and even in the Revision, when this issue was raised, the plaintiff did not file the Registration Certificate. An unregistered Wakf, therefore, could not have instituted the Suit.

(3) The Suit could also not have been instituted by Mustajab Husain as Mutwalli of the Wakf without seeking the permission of the Wakf Board.

10. Sri M.K. Gupta, learned counsel for the petitioner submitted that it was specifically asserted in paragraph-1 of the plaint that the building in which the shop in dispute was situated was Wakf property and the Wakf was registered in the office of the Board as Wakf No. 23 and in the absence of any specific denial of this fact by the defendant in the written statement, the plaint averments stood admitted and there was no need for the plaintiff to lead evidence to prove that the Wakf was registered with the Board. He, therefore, submitted that the Revisional Court committed an illegality in allowing the Revision for the reason that the plaintiff did not file the Registration Certificate to prove that the Wakf was registered with the Board. He also submitted that if there was any doubt in the mind of the Revisional Court, it could have asked the plaintiff-opposite party to file the document regarding registration of the Wakf since this point had not been raised by the defendant before the Court of Small Causes or the matter could have been sent back to the Court of Small Causes for examining this, but the suit could not have been dismissed for this reason. He also pointed out that the registration certificate of the Wakf has been annexed in the Supplementary Affidavit filed by the petitioner in this Court, which fact has not been denied in the Supplementary Counter Affidavit filed by the respondents because all that has been stated is that this document was not filed before the Court of Small Causes. It is also his submission that a Mutwalli of the Wakf can institute a suit for ejectment and recovery of arrears of rent without taking permission of the Wakf Board and so the Revisional Court committed an illegality in holding that a Mutawalli of the Wakf cannot institute a suit for ejectment without taking the permission of the Board.

11. Sri M.K. Nigam, learned counsel for the contesting respondent Nos. 4 and 5 (heirs and legal representatives of the defendant Majeed Uddin), however, submitted that the Revisional Court committed no illegality in allowing the Revision as admittedly the certificate of registration of the Wakf was not filed by the plaintiff and in view of the provisions of Section 87 of the Wakf Act, an unregistered Wakf could not have instituted the Suit. It is also his submission that the consent of the Wakf Board was required to be taken by the Mutawalli for instituting the suit for ejectment and recovery of arrears of rent.

12. I have considered the submissions advanced by learned counsel for the parties.

13. The first issue that arises for consideration is whether the suit could have been instituted on behalf of the Wakf Masjid, Dhuliya Ganj, Agra because it was contended by the defendant before the Revisional Court that no suit for enforcement of any right could be instituted if the Wakf was not registered in accordance with the provisions of the Wakf Act and the plaintiff had not filed any document to prove that it was registered with the Board.

14. To determine this issue it is necessary to examine the provisions of the Wakf Act, the pleadings of the parties and the provisions of Rules 3, 4 and 5 of Order VIII of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC").

Section 87 of the Wakf Act is :

Bar to the enforcement of right on behalf of unregistered wakfs.-(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any Court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard tried or decided by any Court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act.

15. Chapter V of the Wakf Act deals with Registration of the Wakfs. A Wakf is registered u/s 36 and a register of Wakfs is maintained u/s 37. Section 43 provides that where any wakf has been registered before the commencement of the Wakf Act under any law for the time being in force, it will not be necessary to register the wakf under the provisions of the Wakf Act and any such registration made before such commencement shall be deemed to be a registration made under the Wakf Act. Thus, if a Wakf is registered under the provisions of the Wakf Act 1954, it shall be deemed to have been registered under the provisions

of the Wakf Act.

16. The suit was instituted by Syed Mustajab Husain as Mutwalli of Wakf No. 23, Kotwali Ward, Agra-3. Paragraphs 1, 2, 3 and 6 of the plaint which need to be examined are reproduced below:

(1) That the building bearing Municipal No. 21/170 situated at Mohalla Dhuliaganj within Kotwali Ward, Agra consists of five shops on the ground floor and Masjid on the first floor. This is waqf property and is registered in the office of U.P. Sunni Central Board of Waqfs, Lucknow, as Waqf No. 23. The said property shall be referred to as the building hereinafter.

2) That the plaintiff is the Mutawalli of the aforesaid Masjid being Waqf No. 23 and he has been looking after the affairs of the Masjid and the building and he manages the building regularly and as such the plaintiff is the landlord of the building.

3) That the deceased defendant was the tenant in one shop bearing No. 21/170/2 on the ground floor in the building on a monthly rent of Rs. 35/- besides water tax on behalf of the plaintiff and the deceased defendant carried on mutton selling business in the said shop.

.....

6) That the building belongs to and vested in the waqf and the shop in occupation of the defendants in the building also belongs to the waqf and vested in it and as such the provisions of U.P. Act No. XIII of 1972 are not applicable to the building including the shop in occupation of the defendants and, therefore, the said building is exempted from U.P. Act No. XIII of 1972 vide amended U.P. Act No. V of 1995 which came into force from 26-9-1994.

17. The reply to the aforesaid paragraphs of the plaint are contained in paragraphs 1, 2, 3 and 6 of the written statement filed by the defendant, which paragraphs are reproduced below:

1) Para 1 of the plaint as stated is not admitted for want of knowledge excepting that property No. 21/170 Dhuliaganj, Agra consists of five shops on the ground floor and Masjid on the first floor and rest of the allegations are denied for want of knowledge.

2) Para 2 of the plaint is not disputed to the extent that

Shri Mustajab Hussain claiming himself to be the mutwalli

used to realise rent from this defendant.

3) That in para 3 of the plaint it is not disputed that this defendant has been the tenant in the shop in dispute at an agreed monthly rent of Rs. 36-00 per month only on behalf of waqf Masjid Dhuliaganj, Agra. The defendant is not liable to pay any water tax as he has never paid water tax nor any water tax has ever been claimed from him. The rate of rent of Rs. 36-00 per month has been the only

liability as per terms of the tenancy of the defendant. Even in terms of the tenancy the defendant is not liable to pay any water tax.

.....

(6) That para 6 of the plaint as stated is wrong and is not admitted. It is denied that the property in suit is exempted from provisions of U.P. Act No. XIII of 1972.

18. It is in the light of the averments made by the plaintiff and the defendant in the aforesaid paragraphs of the plaint and the written statement that it has to be determined whether the defendant had admitted that the Wakf was registered with the Board.

19. Order VIII of the CPC deals with written statement, set-off and counter-claim. Rule 3 of Order VIII CPC provides that the defendant should deal specifically with each allegation of fact of which he does not admit the truth in his written statement and it shall not be sufficient for a defendant to make a general denial. Rule 4 of Order VIII CPC provides that where the defendant denies an allegation of fact, he must not do so evasively. Rule 5 of Order VIII CPC provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability. Rules 3, 4 and 5 of Order VIII CPC are reproduced:

3. Denial to be specific.-It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. Evasive denial.-Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

5. Specific denial.-(1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability.

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(3) In exercising its discretion under the proviso to sub-rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.

20. It will also be useful to refer to Section 58 of the Indian Evidence Act 1872, which is as follows:

Facts admitted need not be proved.-No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission.

21. With reference to Section 58 of the Evidence Act, the Supreme Court in *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others*, pointed out that admissions in the pleading are by far the best proof of the facts admitted and they by themselves can be made the foundation of the rights of the parties. The observations are:

Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible u/s 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions, which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

22. In *Avtar Singh & Ors., Vs. Gurdial Singh & Ors.*, (2006) 12 SCC 552 the Supreme Court also observed:-

Admission, it is well known, forms the best evidence. It may be that admission does not create any title, but the nature of the land can form subject-matter of admission.

Section 58 of the Evidence Act postulates that things admitted need not be proved.

23. The provisions of Rules, 3, 4 and 5 of Order VIII CPC have been discussed and explained time and again by the Courts and it will be useful to refer to some of the decisions.

24. In *Ganga Prasad Vs. Prem Kumar Kohli*, the Allahabad High Court examined whether there was a specific denial by the defendant in his Written Statement

and it was held that in view of the provisions of Order VIII Rule 3 CPC there is no specific denial if it is merely stated in the written statement that paragraph of the plaint is not admitted:

The second contention put forward is that it has not been proved that the notice was served upon the defendant. It is further contended in this connection that the lower appellate Court acted illegally in receiving additional evidence, at the time of the hearing of the appeal. In order to appreciate this contention, it is necessary to mention that the notice was pleaded in para.2 of the plaint, which pleaded certain other matters also. The only pleading with regard to the notice in the written statement is that "para.2 of this plaint is not admitted". It was also stated, inter alia, in para.2 of the plaint, that the defendant had not vacated the house. It is evident that the defendant never intended to controvert this allegation and to indicate by his "not admitted" that he had vacated the house. I am mentioning this fact for the purpose of showing that, more than one allegation having been made in para.2 of the plaint, a simple "not admitted" was not proper pleading as required by Order 8, Civil P.C. Order 8, R.3 enacts that:

It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

It cannot be said that by a plea, stating that para.2 of the plaint is not admitted, the defendant had specifically dealt with each allegation of the fact contained in that paragraph.

Under these circumstances the plaintiff did not produce any evidence either to prove the posting of the notice or to prove the service of the notice upon the defendant, in the trial Court.

(emphasis supplied)

25. In *Jahuri Sah and Others Vs. Dwarka Prasad Jhunjunwala and Others*, , the Supreme Court observed :-

..... The High Court has pointed out that the plaintiffs have clearly stated in para 1 of the plaint that Shankarlal had been given in adoption to Sreelel. In neither of the two written statements filed on behalf of the defendants has this assertion of fact by the plaintiffs been specifically denied. Instead, what is stated in both these written statements is that the defendants have no knowledge of the allegations made in para 1 of the plaint. Bearing in mind that O.VIII, R. 5, C.P.C. provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted, to say that a defendant has no knowledge of a fact pleaded by the plaintiff is not tantamount to a denial of the existence of that fact, not even an implied denial.

26. In *Smt. Asha Handa Vs. Baldev Raj Handa*, , the Delhi High Court examined

the provisions of Rules 4 and 5 of Order VIII CPC and observed:

The first ground for divorce is persistent cruelty on the part of the respondent. I have briefly adverted to the allegation made by the appellant in this behalf. Significantly, the respondent in his written statement did not make specific denial of each and every averment of fact contained in the petition. For instance, the appellant had specifically contended that she was forced by the respondent to handover her entire salary to him and only a small amount out of the same was given to her for her day to day expenses but I have looked in vain for specific denial of this allegation in the corresponding para of the written statement. He has simply dubbed this allegation as wrong and baseless. Order VIII Rule 4, Civil PC, lays down the where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. The principle underlying this rule is that pleadings should be specific. Rule 5 of the same Order further lays down that every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleadings of the defendant, shall be deemed to be admitted. In such an event the admission itself being proof, no other proof is necessary.

(emphasis supplied)

27. In *Rajiv Saluja Vs. Bhartia Industries Limited and Another*, , the Delhi High Court again observed:-

Since the denial by the defendant to the specific averment of oral extension of the tenancy by the period of six months is not in accordance with Order 8, Rule 5, C.P.C. being unspecific and evasive, the averment of the plaintiff in this regard has to be taken to be admitted.

28. In *Hariram Lehrumal Sindhi Vs. Anandrao Narayanrao Mukati and Others*, , the provisions of Order VIII Rule 5 CPC were considered by the Madhya Pradesh High Court and it was held:

The contention of the learned counsel for the appellant that the fact of mortgage was not admitted by the present appellant Hariram, (who) was silenced by reference to his plea in para 3 of the written statement in answer to para 3 of the plaint in which the mortgage with full particulars is pleaded. Para 3 of the written statement of Hariram merely denied the allegation for want of knowledge.

.....

It is to be seen that in the case of *Samrathmal and Another Vs. Union of India (UOI) and Others*, , a Division Bench of G.P. Bhutt, C.J. And T.P. Naik, J. held in para 22 that.....

A denial of the knowledge of a particular fact is not a denial of the fact and has not even the effect of putting the fact in issue.

It was further held under Order 8, Rule 5, C.P.C. in the case of *Smt. Dhanbai Vs. State of Madhya Pradesh and Others*, (Division Bench) that denial for want of

knowledge amounts to an admission. Reliance was placed on the case of Jahuri Sah v.

Jahuri Sah and Others Vs. Dwarka Prasad Jhunjhunwala and Others, . The dictum in the aforesaid cases fully applies to the facts in hand. In the context of facts of the case also it appears reasonable that the appellant himself claiming to be a tenant from the mortgagees, had no interest in denying the fact of mortgage or the partition. Be that as it may, as a result of the aforesaid dictum, the written statement of the appellant of denial for want of knowledge amounts to an admission under Order 8 Rule 5, C.P.C. He shall be deemed to have admitted the facts of the first mortgage and supplementary mortgage and the partition specifically pleaded in the plaint.

(emphasis supplied)

29. In Sushil Kumar Vs. Rakesh Kumar, , the Supreme Court also considered the provisions of Rules 3, 4 and 5 of Order VIII CPC:

The appellant in paragraph 18 of the election petition alleged :

That it is most significant and relevant to state here that the elder brother namely Sri Rajesh Kumar of Sri Rakesh Kumar was and is a student of B.I.T. Meshra School where he got his age recorded as 22 years on 28.7.1999. So an easy and clear conclusion can be drawn that his younger brother namely Rakesh Kumar was at least less than 22 years in the year 1999.

The said statements, as would appear from paragraph 15 of the written statement, had not been traversed in accordance with law. Paragraph 15 of the written statement is as under :

That the statement made in para 18 of the election petition under reply is not correct. Merely on imagination Sri Rajesh Kumar has been mentioned as elder brother. The petitioner has no knowledge about that and wrong statement has been made.

In terms of Order VIII, Rule 3, a defendant is required to deny or dispute the statements made in the plaint categorically, as an evasive denial would amount to an admission of the allegation made in the plaint in terms of Order VIII, Rule 5 of the Code of Civil Procedure.

Under Section 58 of the Indian Evidence Act a fact admitted need not be proved.

In paragraph 15 of the written statement, the respondent has not specifically contended that the statements made in paragraph 18 of the election petition are incorrect or how they are so. Merely the said allegations have been denied as being imagination of the election petitioner without making a statement of fact that Rohit Kumar is not the elder brother of the respondent or in fact younger to him. Such an evasive denial attracts Order VIII, Rule 5 of the Code of Civil Procedure

The statements made in paragraph 18 of the election petition must, therefore, be deemed to have been admitted.

The High Court, on the other hand, observed :

...It is true that it has not been specifically stated in the reply to paragraph 18 of the election petition that Rajesh Kumar happens to be younger brother of Rakesh Kumar but making him an elder brother has been totally denied. In that way, it cannot be said that only evasive reply is there and when this fact could not be proved by any cogent evidence from the side of the election petitioner that Rajesh Kumar happens to be the elder brother of the respondent Rakesh Kumar rather when contrary evidence is there from the side of the respondent then the age group of Rohit Kumar @ Rajesh Kumar does not come in aid to the election petitioner to prove the underage of Rakesh Kumar the respondent.

In our opinion, the approach of the High Court was not correct. It failed to apply the legal principles as contained in Order VIII, Rules 3 and 5 of the Code of Civil Procedure. The High Court had also not analysed the evidences adduced on behalf of the appellant in this behalf in details but merely rejected the same summarily stating that the vague statements had been made by some witnesses. Once it is held that the statements made in paragraph 18 of the election petition have not been specifically denied or disputed in the written statement, the allegations made therein would be deemed to have been admitted, and, thus, no evidence contrary thereto or inconsistent therewith could have been permitted to be laid.

In *Badat and Co. Vs. East India Trading Co.*, this Court upon referring to Order VIII, Rules 3, 4 and 5 of the Code of Civil Procedure, observed :

These three rules form an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. The written-statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively, but answer the point of substance. If his denial of a fact is not specific but evasive, the said fact shall be taken to be admitted. In such an event, the admission itself being proof, no other proof is necessary.

(emphasis supplied)

30. The Bombay High Court in *Ramchandra Jamnadas Katariya Vs. Nuruddinbhai Ali and Others*, also examined whether there was a vague denial in the Written Statement and observed :

It will be seen from the record that the notice terminating the tenancy with effect from 30th June, 1988 was issued on 27th May, 1988. The notice was received on 28-5-1988. In para two of the suit, the plaintiff has specifically averred as under :

That, the defendant is in occupation of block No. 14 as a tenant at a monthly rent of Rs. 140/-p.m. The tenancy commences on the first day of each English

calendar month.

In reply to this averments, the applicant has stated in the written statement as under :

It is admitted that the defendant is in occupation of block No. 14 as a monthly tenant on a rent of Rs. 140/-per month. It is denied that the tenancy commences on the 1st of each English Calendar month.

It can, thus, be seen that the plaintiff has specifically pleaded that the tenancy commences on the first day of each English calendar month. Apart from vague denial to this averment, the defendant has done nothing more in the written statement. If it was the case of the defendant that the tenancy commences from 10th of each English calendar month, then the defendant ought to have specifically pleaded the same in this written statement.....The defendant has nowhere asserted his case that the tenancy commences from 10th of each month. In view of specific averment by the plaintiff that the tenancy commences from 1st of every English month and vague denial of the same by the defendant, in my view, the present case is squarely covered by the judgment of the Supreme Court in the case of Badat and Co. Vs. East India Trading Co., .

(emphasis supplied)

31. What, therefore, follows from the provisions of Rules 3, 4 and 5 of CPC, section 58 of the Evidence Act and the decisions referred to above is that it is not sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively but answer the point of substance. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted. A bald statement in the written statement that a particular paragraph of the plaint is not admitted does not mean that the defendant has specifically dealt with each allegation of fact stated in that paragraph of the plaint. To say that a defendant has no knowledge of a fact pleaded by the plaintiff does not tantamount to a denial of the existence of that fact, not even an implied denial. If there is no specific denial in the written statement or if the denial is evasive than the facts stated in the plaint shall be taken to have been admitted and in such an event, admission itself being proof, no other proof is necessary.

32. In the present case, the plaintiff had made a specific averment in paragraph 1 of the plaint that the building bearing Municipal No. 21/170 situated at Mohalla Dhuliya Ganj consists of five shops on the ground floor and a Masjid on the first floor and this building is a Wakf property which Wakf is registered in the office of the U.P. Sunni Central Wakf Board, Lucknow as Wakf No. 23. The defendant in the written statement has merely stated that paragraph 1 of the plaint as stated, except that property No. 21/170 Dhuliya Ganj, Agra consists of five shops on the

ground floor and a Masjid on the first floor, are not admitted for want of knowledge. It is an evasive reply and is not a specific denial. It needs to be noticed that information regarding registration of a Wakf with the Board is not a secret information which cannot not be obtained from the Board. Section 30 of the Wakf Act provides that the Board can allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees as may be prescribed. The defendant could have obtained information from the Board as to whether the Wakf was registered or not.

33. Rule 3 of Order VIII provides that it shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth. Rule 4 of Order VIII provides that the denial must not be evasive and the defendant must answer the point of substance. By way of an example it also provides that if it is alleged the defendant had received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. Rule 5 of Order VIII provides that every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted. The word "specifically" used in Rule 5 of Order VIII qualifies not only the word "denied" but also the word "stated to be not admitted" and, therefore, the refusal to admit must also be specifically stated.

34. It, therefore, follows that the defendant admitted that the Wakf was a registered Wakf and in view of the provisions of Section 58 of the Evidence Act, admission itself is proof of this fact and it was not necessary for the plaintiff to have filed the certificate of registration of the Wakf.

The Revisional Court, therefore, committed an illegality in holding that the suit could not have been instituted as the plaintiff did not prove that the Wakf was a registered Wakf as he had not filed the certificate of registration.

35. What further needs to be noticed is that in view of the proviso to Rule 5(1) of Order VIII CPC, the Revisional Court could have, in its discretion, required the plaintiff to prove that the Wakf was registered, otherwise than by such admission but it did not do so and proceeded to dismiss the Suit. The petitioner has, however, brought on record the registration certificate of the Wakf issued by the Board and all that has been stated by the respondents is that it was not filed in the Court below.

36. Thus, the finding of the Revisional Court cannot be sustained and it has to be held that the Wakf was a registered Wakf and it could have instituted the Suit.

37. The second issue that arises for consideration is whether a Mutawalli can maintain a suit for ejectment of a tenant and for recovery of arrears of rent. The Revisional Court, after considering the various provisions of the Wakf Act, held that the Mutawalli could have instituted the Suit only with the permission of the

Wakf Board.

38. Learned counsel for the petitioner has submitted that a Mutawalli can maintain a suit for eviction and recovery of arrears of rent and in this connection has placed reliance upon the judgment of the Andhra Pradesh High Court rendered in A.S. Abdul Khader Wakf for Deeni Talim Vs. Saber Miah, and the decision of the Allahabad High Court in Mohammad Zafar Vs. State of U.P. and Another, .

39. Learned counsel for the respondents has, however, submitted that there is no provision in the Wakf Act which permits a Mutawalli to institute a suit without the permission of the Wakf Board and, therefore, the Revisional Court committed no illegality in holding that the Muttwalli could not have instituted the suit for ejectment and recovery of arrears of rent.

40. In order to examine this issue, it will be necessary to place the various provisions of the Waqf Act, which have been referred to by the learned counsel for the parties.

Section 32 of the Wakf Act deals with the powers and functions of the Board. Sections 32(1) and 32(2) (i) are quoted below:

32 (1) Powers and functions of the Board.-(1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.

.....

32 (2)(i) to institute and defend suits and proceedings relating to wakfs;

41. The duties of a Mutawalli have been specified u/s 50 of the Wakf Act and the same are as follows:

Duties of Mutawalli.-It shall be the duty of every mutawalli,-

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of the Act or of any rule or order made thereunder;

(c) to allow inspection of wakf properties, accounts or records or deeds and documents relating thereto;

(d) to discharge all public dues; and

(e) to do any other act which is lawfully required to do by or under this Act.

42. The Andhra Pradesh High Court in A.S. Abdul Khader (supra) examined whether a Mutawalli can maintain a suit for eviction and recovery of arrears of rent and in this connection observed:

...Suffice for us to state that the Mutawalli who is the person in-charge of the affairs of the Wakf in relation to supervision and management and who is normally interested in the Maintenance and management of the Wakf and the Wakf properties, in the interest of the Institution, can definitely maintain a suit for eviction, recovery of mesne profits or damages for use and occupation. In Bibi Saddiqa Fatima Vs. Saiyed Mohammad Mahmood Hasan, held (para 16):

A Mutawalli is like a Manager rather than a trustee (see page 498). The Mutawalli so far as the Waqf property is concerned, has to see that the beneficiaries got the advantage of usufruct. We have already pointed out that under the Shia law the property does not remain with the waqif. It is transferred to God or to the beneficiaries. At page 554 of Tyabji's famous book it is stated:

The support and maintenance of the Waqif's family, etc. would seem under the Act to be deemed a purpose recognized by the Muslim law as religious, pious or charitable; Section 2. This view was put forward by Ameer Ali, J., with great learning in his dissenting judgment in Bikani Mia's case (1893) ILR 20 Cal 106.

Section 527 at page 593 runs thus:

The Mutawalli has no ownership, right or estate in the Waqf property; in that respect he is not a trustee in the technical sense: he holds that property as a manager for fulfilling the purpose of the Waqf.

A contrary statement of law at page 202 of Mulla's Mahomedan Law, seventeenth edition based on the decision of the Allahabad High Court in Mohammad Qamar Shah Khan v. Mohammad Salamat Ali Khan, AIR 1993 All 407 to the effect that "the Mutawalli is not a mere superintendent or manager but is practically speaking the owner is not a correct statement of law. In a later Full Bench decision of the same Court in Moattar Raza and Others Vs. Joint Director of Consolidation, U.P. Camp at Bareilly and Others, while overruling the earlier decision, it has been said at pages 513-14:

the legal status and position of a Mutawalli under a waqf under the Musalman Law is that of a Manager or Superintendent.

The general powers of the Mutawalli as mentioned in Section 529 of Tyabji's book are that he

may do all acts reasonable and proper for the protection of the Waqf property,

and for the administration of the Waqf.

It will be useful to point out the law as regards distribution of distributable income of the Waqf properties amongst the beneficiaries as mentioned in the various sub-sections of Section 545 at pages 606-608. Unless a different intention appears, sub-section (4) says:-

The benefit of a waqf for a person's sons and his children, and the children of his children for ever so long as there are descendants, is taken per capita, males and females taking equally and the children of daughters being included.

Attention must be called to an important statement of law in the well-known authoritative book of Mohomedan Law by Ameer Ali Vol. I, fourth edition, page 472. It runs thus:

It is lawful for a mutawalli with the income of the waqf to erect shops, houses, etc., which may yield profit to the waqf. All properties purchased by the Mutawalli out of the proceeds of the waqf become part of the waqf and are subject to the same legal incidents as the original waqf estate.

In the commentary on the law of Wakf in India by Dr. Ahmedullah Khan, 3rd Edition, at page 119, the learned commentator while dealing with duties of a Mutawalli observed:

Under Islamic Law of Wakfs, Mutawalli acquires a very peculiar and significant position with certain amount of discretionary powers which he is expected to exercise diligently in the interest of Wakf and Wakf property. He is manager and custodian of the Wakf property and has to discharge his duties according to the directions of the Wakif as enumerated in the Wakf Deed. However, he is also authorized to take decision and use his own discretion if it becomes inevitable in order to save the Wakf property from being affected.

Section 15 of the Wakf Act 1954 which had been repealed by the present Act - Wakf Act, 1995, had dealt with the functions of the Board and Section 15(2)(h)(i) of the said Act had specified the Power of the Board to institute and defend suits and proceedings in a Court of law relating to wakfs. Section 32 of the present Wakf Act, 1995 deals with powers and functions of the Board and Section 32(2) (i) of the present Act also confers power on the Wakf Board to institute and defend suits and proceedings relating to Wakfs. Section 36 of the Wakf Act, 1954 had dealt with the duties of Mutawallis and Section 50 of the present Act, the Wakf Act, 1995, deals with the duties of Mutawalli. Section 112 of the present Act deals with Repeal and Savings and sub-section (2) specifies notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act. Sub-section (1) of Section 112 specifies that the Wakf Act, 1954 (29 of 1954) and the Wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed. On the strength of these statutory provisions, the main contention that Wakf Board alone can institute a suit of this nature and a Mutawalli cannot institute or

maintain these suits had been seriously canvassed.

In the present case, the managing Mutawalli who is interested in safeguarding the interests of the Wakf and its properties had instituted the suits praying for appropriate reliefs. It is also pertinent to note that the managing Mutawalli is permitted to institute these suits by the Wakf Board as evidenced by Ex. A-4. A Mutawalli is a person who will manage and supervise the Wakf properties. In view of the same, it cannot be said that a Mutawalli cannot maintain a suit in relation to Wakf property at all and the Wakf Board alone should institute the suit. Hence, we are of the considered opinion that a Mutawalli can definitely institute a suit for recovery of possession of the Wakf property from tenants and also for appropriate reliefs.

The position of a Mutawalli is just akin to a Trustee. It is no doubt true that a Mutawalli cannot act adverse to the interests of the Wakf. A Mutawalli is expected to administer and manage the properties of the Wakf keeping in view the wishes of the founder and a Mutawalli is expected to protect the interest of the beneficiaries as well.

(emphasis supplied)

43. In Mohammad Zafar (supra) the Allahabad High Court also examined the status of a Mutawalli and the provisions of the Wakf Act and held that a Mutawalli can institute a Suit for eviction of the tenant and recovery of arrears of rent where the property has been let out by him. The observations are :-

To answer the question whether the Mutawalli could institute the suit and execute the decree it is necessary to examine the status of the Mutawalli under the Personal Law as well as under the provisions of the U.P. Muslim Waqf Act, 1960 and the Waqf Act 1995. Para 527 of Tyabji's Muslim Law (Fourth Edition) is quoted:

The mutawalli has no ownership right or estate in waqf property; in that respect he is not a trustee in the technical sense; he holds the property as a manager for fulfilling the purpose of the waqf.

In Moattar Raza and Others Vs. Joint Director of Consolidation, U.P. Camp at Bareilly and Others, it has been held by a full Bench of the Allahabad High Court that the legal status and position of a Mutawalli is that of a manager or superintendent. The Supreme Court in Bibi Saddiqa Fatima Vs. Saiyed Mohammad Mahmood Hasan, held that a mutawalli is like a manager rather than a trustee. Before examining the statutory provisions it may be noted that the Waqf Act 1954 was never enforced in U.P. The U.P. Muslim Waqf Act 1960 was applicable in this State. Section 15 (2) of this Act gives a list of the functions to be performed by the Waqf Board, which includes the right of instituting and defending suits. The position in the Waqf Act, 1995 is the same vide Section 32 (2) of the Act. The question is whether this power given to the Waqf Board is in addition to the right of the Mutawalli to institute a suit for eviction of a tenant or

in derogation thereof. The Waqf Act 1995 defines a Mutawalli in Section 3 (i) as follows:

3 (i) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a waqf has been created, or by a competent authority, to be the mutawalli of a waqf and includes any person who is a mutawalli of a waqf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by a mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any waqf or waqf property;

Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such member is an office bearer of such committee or corporation.

It appears from the definition that a Mutwalli has a right to manage and administer the Waqf property. The right of management would also include the right of letting out the Waqf property unless the statute prohibits or restricts the right. Para 533 of Tyabji's Muslim Law (Fourth Edition) is quoted below;

533 The mutawalli may grant a lease for a year of a house dedicated to the poor or other charitable object, and a lease for three years of lands; and the lease in either case is not determined by his death. A lease granted by the mutawalli for a longer term than for one year or three years respectively is not void but voidable.

Section 56 of the Waqf Act, 1995 puts a restriction on transfer by way of lease or sub-lease of immovable property of the Waqf for a period more than three years. Leases for more than a year and less than three years can be executed with the approval of the Board. There is no restriction on the execution of leases up to one year. Section 49-A of the U.P. Muslim Waqf Act, 1960 prohibited the grant of lease for a period exceeding one year. In the present case a lease of the premises in dispute for period of one year was executed by the Mutawalli in the year 1989 when the provisions of the U.P. Muslim Waqf Act, 1960 were in force. The petitioner was thus inducted by the Mutawalli. The lease was terminated by a notice u/s 106 of the Transfer of Property Act also given by the Mutawalli. The suit was instituted by the Mutawalli alleging that the property was let out by him. The petitioner did not deny the relationship of landlord and tenant between the parties. In view of the fact that the property was let out to the petitioner by the Mutwalli and the tenancy was also terminated by a notice given by the Mutawalli it is difficult to accept the petitioner's contention that the Mutwalli was not competent to institute the suit or to maintain the execution proceedings. In *Yatan Swaropp Saxena Vs. Allah Rabbul Almin through Shafiq Ahamd Khan, Mutawalli Masjid Tahsil Wali* and another 1995 (2) A.R.C. 406 it was held that Section 57-A of U.P. Muslim Waqf Act, 1960, which speaks about recovery of possession of Waqf property from unauthorized occupants and section 66 of the

Act, which requires the court to issue notice to the Waqf Board where claim to the title of the Waqf property or the right of the Mutawalli is involved do not come in the way of a suit for ejectment of a tenant. In Mohiuddin Vs. IInd Additional District Judge, Allahabad and others 1986 (1) A.R.C. 420 it was held that an application u/s 21 (1) (a) of U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972 filed by the Mutawalli of a public Waqf is maintainable. A suit for eviction of the tenant can be filed by the landlord under the general law. A suit for eviction of the tenant could therefore be filed by the Mutawalli as landlord and manager of the waqf unless there is anything to the contrary contained under the U.P. Muslim Waqf Act, 1960 or the Waqf Act, 1995.

The property of the Waqf vests in the Almighty. The Waqf Board is a corporate body, which has a right to hold and dispose of property but the property of the Waqf does not vest in the Waqf Board. The property is also not under the direct management of the waqf Board. It is the Mutwalli who is the manager of the Waqf property. No doubt the Board has the over all superintendence over the Waqf property and can issue directions to the Mutwalli and can also institute and defend suits on behalf of the waqf vide section 19 (2) (q) of the U.P. Muslim Waqf Act, 1960 and Section 32 (i) of the Waqf Act, 1995 but these provisions are enabling provisions and do not take away the right of the Mutawalli where the property has been let out by him to institute a suit for eviction of the tenant and for recovery of arrears of rent. A suit for eviction of a lessee in fact is ordinarily to be filed by the lessor, who in this case is the Mutawalli. The contention of the petitioner's counsel, therefore, that the Mutwalli had no right to institute a suit on behalf of the Waqf or to execute the decree is repelled.

(emphasis supplied)

44. The plaintiff had alleged in the plaint that the plaintiff was the Mutawalli and the defendant had been given the shop on rent in the building belonging to the Wakf. The defendant in his written statement also admitted that Mustajab Husain claiming himself to be the Mutawalli of the Wakf used to realise the rent from the defendant.

45. Thus, in view of the decisions rendered in A.S. Abdul Khader (supra) and Mohammad Zafar (supra), the permission of the Board was not required to be taken by the plaintiff for instituting the Suit.

46. The Revisional Court also observed that when the Court of Small Causes had recorded a finding that there was no default in payment of rent and when the rent was also tendered by the defendant after receipt of the notice but it is not accepted by the plaintiff, then it should have been clarified as to how the notice could have formed the basis for ejectment.

47. Such an observation was uncalled for. The notice was sent u/s 106 of the Transfer of Property Act and it will be useful to refer to the provisions of Section 106 of the Transfer of Property Act as amended in the State by U.P. Act No. 24 of 1954 and the same is as follows:

Section 106.--In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six month's notice; and a lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable on the part of either lessor or lessee, by thirty days' notice.

Every notice under this section must be in writing signed by or on behalf of the person giving it and either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants, at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

48. This Court in Suraj Prasad Vs. Smt. Kusumlata Sinha, , while considering the requirements of the notice u/s 106 of the Act observed:

The third objection to the validity of the notice was that it did not meet the requirement of Section 106 of the Transfer of Property Act as amended by U.P. Civil Law 1954 as it was not a thirty days notice of termination of tenancy. In fact at one stage the learned counsel strenuously argued that the tenancy has not at all been terminated and there is nothing in the notice terminating the tenancy but merely calling upon the tenant to vacate the premises leased would not amount to terminating the tenancy. The learned counsel referred to an old Full Bench decision of this Court in the case of Bardley v. Atkinson, ILR (1885) 7 All 899 (FB). Much water has flown down the bridge since the Full Bench decided that case and I need not encumber this judgment by referring to the numerous cases in which the Full Bench decision in ILR (1885) 7 All. 899 (FB) has been considered and explained. A notice calling upon the tenant to vacate the leased premises would always amount to a notice terminating the tenancy. Under clause (h) of Section 111 of the Transfer of Property Act a lease of immovable property determines on the expiration of a notice to determine the lease or to quit, or of intention to quit, the property leased, duly given by one party to the other. Whether the lessor has given a notice expressing an intention that the lease will stand terminated or he by the notice calls upon the lessee to quit, that is, to leave, the legal consequence of both would be that the lease would stand determined. The provisions of Section 106 of the Transfer of Property Act lay down the manner in which such a notice is to be served and fixes the time before which it has to be given. In Ram Chandra and Another Vs. Lala Dulichand, , a notice calling upon the tenant to vacate the premises let out has been held to be a notice which successfully determines the tenancy.

(emphasis supplied)

49. It is, therefore, not necessary that there should be default in payment of rent for termination of the tenancy. The requirement is satisfied if the lessor has given a notice expressing an intention that the lease shall stand terminated on the expiry of the period mentioned in the notice. The Court of Small Causes has held

that the notice sent by the plaintiff was valid and nothing has been pointed out by learned counsel for the petitioner to show that there was any illegality in the notice.

50. Thus, for all the reasons stated above, the judgment and order dated 19th July, 2003 of the Revisional Court cannot be sustained and is, accordingly, set aside.

51. The writ petition is allowed and the judgment and order of the Court of Small Causes is restored.

52. After the judgment was delivered, learned counsel for the respondents made a prayer that three months' time may be given to the respondents to vacate the premises in dispute. He further states that the tenants shall now pay damages at the rate of Rs. 350/-per month instead of Rs. 36/-per month and that the tenant shall also furnish an undertaking before the Judge, Court of Small Causes within two weeks.

53. The tenant is, accordingly, granted time upto 23rd May, 2012 to handover the peaceful possession of the premises to the landlord subject to the tenants giving an undertaking within two weeks from today before the Judge, Court of Small Causes to the following effect :

1 That the tenants shall handover peaceful possession of the premises to the landlord on or before the 23rd May, 2012.

2 That the tenants shall pay damages at the rate of Rs. 350/-per month up to the date he hand-over the possession of the premises to the landlord.

3 That the tenants shall not induct any other person in the premises.

54. It is made clear that in the event the tenant fails to give the undertaking within the aforesaid period or fails to comply with any of the terms of the undertaking, it will be open to the landlord to get the decree executed.