

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

**SUBJECT : CODE OF CIVIL PROCEDURE**

**RFA No.458/2008**

**Date of decision: 3rd December, 2008**

**MUKESH KUMAR DECD. THR. LR'S and ANR. .... Appellants**  
**Through: Mr.K.G.Chhokar, Adv.**

**versus**

**SAINI COOPERATIVE THRIFT and**  
**CREDIT SOCIETY LTD. ....**  
**Respondent**  
**Through: Mr.B.B.Gupta, Adv.**

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE J.R. MIDHA**

**PRADEEP NANDRAJOG, J. (Oral)**

1. Heard learned counsel for the parties.
2. There is no merit in the appeal and hence the same is being dismissed in limine.
3. But before that we would like to pen down a few words, for the reason, in a large number of matters emanating from learned Additional District Judges we are noticing that proved documents being recorded in the statement of the witnesses as exhibits are not being assigned the requisite exhibit number.
4. The instant case is also one of the said category.
5. PW-1, the witness of the plaintiff, Shri Hari Kishan Saini, as per the amended provisions of the Code of Civil Procedure, led examination-in- chief by filing an affidavit. He has proved five documents being Ex.PW-1/2 to Ex.PW-1/6.
6. None of the documents referred to as Ex.PW-1/2 to Ex.PW-1/6 in the deposition of the witness has been given the requisite exhibit mark by the learned Trial Judge.

7. Fortunately for us, the identity of the documents can be traced and the document correctly identified, for the reason, in the plaint, the plaintiff has referred to the said documents as Annexure-A to F and in his affidavit by way of evidence PW-1 has referred to the documents with respect to the exhibit marks as also the annexures.

8. Annexure-A to the plaint has been exhibited as Ex.PW-1/2, Annexure-B to the plaint has been exhibited as Ex.PW-1/3, Annexure-C to the plaint has been exhibited as Ex.PW-1/4, Annexure-D to the plaint has been exhibited as PW-1/5 and Annexure-E to the plaint has been exhibited as PW-1/6.

9. We now take up the issue on merits.

10. Saini Cooperative Thrift and Credit Society Ltd. filed a suit for recovery of possession and mesne profits against Naresh Kumar and Mahesh Kumar, sons of Late Shri Mohan Lal. On the death of Mr.Mahesh Kumar, his wife and children were impleaded as defendants No.2(a) to 2(c).

11. Case of the society was that Late Mohan Lal was a tenant under them in respect of two rooms and a store/godown with user of a common verandah and a passage besides a common bath and toilet on the ground floor of property bearing Municipal No.2420-2421, Ward No.XI, Kamra Bangash, Darya Ganj, New Delhi-110002. Tenancy was residential. It was asserted that on 16th August 1988, vide Annexure-D, tenancy of Mohan Lal was determined and since rent payable was Rs.8.81 per month, his status changed to that of a statutory tenant from a contractual tenant and that a reply was received from Mohan Lal on 3rd October 1988, Annexure-F. It was stated that in the reply Mohan Lal admitted his status as a tenant under Saini Cooperative Thrift and Credit Society Ltd.

12. Alleging that Mohan Lal died on 31st March 1991 leaving behind his wife Smt.Bhagwati Devi as his legal heir and that he was also survived by his two sons, it was stated that only Bhagwati Devi was a dependent upon Mohan Lal and was entitled to occupy the tenanted premises during her life-time because of the applicability of the Delhi Rent Control Act 1958; alleging that on the death of Bhagwati Devi, the society became entitled to recover possession of the property from the defendants who not being dependent on their father had to be treated as unauthorized occupants thereof. It was pleaded in the plaint that knowledge of Bhagwati Devi dying was acquired by the society when it instituted an eviction proceeding before the Rent Controller on 16th January 2004. At that stage, on 4th October 2004 a written statement was filed by the sons of Mohan Lal informing that their mother had died about 3 years ago.

13. The appellants filed a written statement questioning the right of the society to evict them. Bar of limitation was pleaded by alleging that the suit was filed 14 years after the death of Mohan Lal.

14. On the pleadings of the parties, issues were settled on 19th September 2005. We note that no issue was settled pertaining to bar of limitation. 15. We need not note the

various issues which were settled for the reason at the hearing of the appeal only two contentions have been urged. Firstly, that the suit was barred by limitation and that notwithstanding an issue not being settled the issue of limitation has to be considered by every Court as per the mandate of Section 3 of the Limitation Act 1963. Secondly, it is urged that there is no evidence on record to establish that the Cooperative Society was the landlord or that the tenancy of Mohan Lal was determined during his life-time. 16. To appreciate the claim in the suit and the contentions urged before us, provisions of the Delhi Rent Control Act 1958 needs to be noted. 17. The Delhi Rent Control Act 1958 was promulgated on 31st January 1958 and came into force on 9.2.1959. As originally enacted, all tenancies in Delhi were governed by the provisions of the said Act. Section 14 of the Act ousted the jurisdiction of the Civil Courts to order ejectment of a tenant or direct recovery of possession of a tenanted premises. The non-obstante clause of Section 14 had an over-riding effect on all laws as also contracts and save and except a ground available to a landlord under any one or more of clauses (a) to (l) of Section 14, ejectment could be ordered only by Rent Controllers on proof of any one or more of clauses (a) to (l) being satisfied. 18. Whether a statutory tenancy was inheritable or not became a subject matter of dispute. The Honble Supreme Court rendered an opinion reported as 1978 SC 955 Ganpat Lodha vs. Sashikant holding that statutory tenancies were not inheritable. This view was subsequently overruled by the Honble Supreme Court in the decision reported as AIR 1985 SC 796 Smt. Gian Devi Anand vs. Jeevan Kumar and Ors. which took the view that even statutory tenancies are inherited. 19. But, the legislature amended the Delhi Rent Control Act 1958 by Act No.18 of 1976. Clause (l) of Section 2 was amended. Said clause defined tenant. Post amendment of Act No.18 of 1976 the definition of tenant was as under:- (l) tenant means any person by whom or on whose account or behalf the rent of any premises is, or, but for a special contract, would be, payable, and includes (i) a sub-tenant; (ii) any person continuing in possession after the termination of his tenancy; and (iii) in the event of the death of the person continuing in possession after the termination of his tenancy, subject to the order of succession and conditions specified, respectively, in Explanation I and Explanation II to this clause, such of the aforesaid persons (a) spouse, (b) son or daughter, or, where there are both son and daughter, both of them, (c) parents, (d) daughter-in-law, being the widow of his pre-deceased son, as had been ordinarily living in the premises with such person as a member or members of his family up to the date of his death, but does not include, - (A) any person against whom an order or decree for eviction has been made, except where such decree or order for eviction is liable to be re-opened under the proviso to section 3 of the Delhi Rent Control (Amendment) Act, 1976 (18 of 1976); (B) any person to whom a licence, as defined by section 52 of the Indian Easements Act, 1882 (5 of 1882), has been granted. Explanation I. The order of succession in the event of the death of the person continuing in possession after the termination of his tenancy shall be as follows:- (a) firstly, his surviving spouse; (b) secondly, his son or daughter, or both, if there is no surviving spouse, or if the surviving spouse did not ordinarily live with the deceased person as a member of his family up to the date of his death; (c) thirdly, his parents, if there is no surviving spouse, son or daughter of the deceased person, or if such surviving spouse, son or daughter or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death; and (d) fourthly, his daughter-in-law, being the widow of his pre-deceased son, if there is no surviving

spouse, son, daughter, or parents of the deceased person, or if such surviving spouse, son, daughter or parents, or any of them, did not ordinarily live in the premises as a member of the family of the deceased person up to the date of his death. Explanation II. - If the person, who acquires, by succession, the right to continue in possession after the termination of the tenancy, was not financially dependent on the deceased person on the date of his death, such successor shall acquire such right for a limited period of one year; and, on the expiry of that period, or on his death, whichever is earlier, the right of such successor to continue in possession after the termination of the tenancy shall become extinguished. Explanation III. For the removal of doubts, it is hereby declared that, - (a) where, by reason of Explanation II, the right of any successor to continue in possession after the termination of the tenancy the right of any other successor of the same category to continue in possession after the termination of the tenancy; but if there is no other successor of the same category, the right to continue in possession after the termination of the tenancy shall not, on such extinguishment, pass on to any other successor, specified in any lower category or categories, as the case may be; (b) the right of every successor, referred to in Explanation I, to continue in possession after the termination of the tenancy, shall be personal to him and shall not, on the death of such successor, devolve on any of his heirs; 20. It is thus apparent that post Act No.18 of 1976 qua a residential premises, on the death of a tenant which necessarily would include a statutory tenant, the tenancy is inherited as per clause (1) of Section 2, meaning thereby, vide Explanation-II the inheritance of the tenancy is limited to a period of one year after the death of the tenant save and except where the legal heir is financially dependent upon the tenant. 21. Thus, natural heirs of a tenant who were not financially dependent upon the tenant at the time of the death of the tenant would have to be treated as unlawful occupants post expiry of the one year period envisaged under Explanation-II. 22. Reverting to the facts of the instant case, the case of the Cooperative Society was that the widow of Mohan Lal was dependent upon her husband and hence for the duration of her life-time would be entitled to be treated as a tenant and hence had a right to occupy the subject premises which were alleged to be a residential premises. 23. The right to seek eviction would obviously accrue on the death of Bhagwati Devi. Admittedly, the suit for possession has been filed well within the period of 12 years of the death of Bhagwati Devi. 24. That takes care of the plea of limitation which was urged in the written statement qua which no issue was settled probably for the reason counsel at the Trial Court realized that no useful purpose would be served in getting settled such an issue. 25. On merits, PW-1 proved the notice sent to Mohan Lal on 6th August 1980 as Ex.PW-1/5 and the reply received thereto from one Shri Inderjeet Singh, Advocate under the authority of Mohan Lal on 3.10.1988 as Ex.PW-1/6. 26. We note that the witness of the Cooperative Society was not cross-examined in spite of 3 opportunities granted to the appellants to cross- examine the witness. 27. We note that in his affidavit by way of evidence the witness of the cooperative society stated that in response to Ex.PW-1/5 a reply was received from Shri Inderjeet Singh, Advocate on behalf of Mohan Lal being Ex.PW- 1/6. 28. As noted above, the witness of the cooperative society was not cross-examined. It is obvious that the testimony of the witness was not challenged with respect to his statement that Ex.PW-1/6 was sent by Shri Inderjeet Singh under the authority of Mohan Lal. 29. Ex.PW-1/6 which was annexed as Annexure-F to the plaint is the original reply. It reads as under:- To Shri L.S.Rana, Advocate, 13, Lawyers Chamber, Tehsil

Building, Tis Hazari Courts, Delhi-110054. Dear Sir, Your notice dated 16.8.1988 sent by you on behalf of your client M/s. The Saini Cooperative Thrift and Credit Society (Ltd.), Kamra Bangash, Daryaganj, Delhi to my client Shri Mohan Lal son of Shri Bhambhoo Ram, resident of 2420-2421, Ward No.11, Kamrabangash, Daryaganj, Delhi has been placed in my hands with the instructions to reply the same as under:-

1. That para 1 of your notice under reply is admitted to the extent that my said client was a tenant under Shri Rattan Lal Gupta and others in respect of two rooms, common verandah in property No.2420-2421 including latrine and bath-room, on a monthly rent of Rs.8.81. It is denied that my client has to pay rent to said Shri Rattan Lal Gupta and others w.e.f. 1.12.1971.
2. That para 2 of your notice is admitted to the extent that your client had purchased the above property from Shri Rattan Lal Gupta and others. It is denied that Shri Rattan Lal Gupta and others, the previous owners have authorized your client to collect the rent of the tenanted premises. My said client has paid the rent upto-date to the previous owners and no thing is payable by my said client and as such your client has no right to recover the rent from my said client.
3. That para 3 of your notice is to be replied by stating that your client is entitled to get the rent only from 18.7.1974 from my said client which rent was sent to your client by money order but your client refused to accept the same and my said client has deposited the rent w.e.f. 18.7.1974 to 17.9.1988 @Rs.8.81 per month amounting to Rs.1488-89 in the court of Shri Rakesh Kapoor, Addl. Rent Controller, Delhi vide No.1943 dated 19.9.1988 in favour of your client. No rent is due from 1.12.71 to 17.7.74.
4. Para 4 of your notice is not denied.
5. Para 5 of your notice is wrong and denied. It is denied that my client is a regular defaulter in making the payment of rent. My said client had sent the rent by money order and also tendered the same personally but your client refused to accept the same with ulterior motives. My said client has deposited the rent upto 17.9.1988 in the court of Shri Rakesh Kapoor, A.R.C., Delhi as stated above.
6. Para 6 of your notice is absolutely wrong and denied. My said client is a lawful tenant and your client has no right to terminate his tenancy and as such the question of handing over the possession of the tenanted premises to your client does not arise at all.
7. Para 7 of your notice is wrong and denied. It is absolutely wrong to allege that my said client has made any addition or alteration in the tenanted premises since the inception of tenancy.
8. Para 8 of your notice is false, frivolous, and baseless. The tenanted premises is in a good condition and there is no danger of any damage to the tenanted premises. No repair is required in the tenanted premises except minor repairs which my client will get done. The tenanted premises is fit for human habitation and there is no likelihood of the building collapsing/fallen.
9. Para 9 of your notice is wrong and denied. The tenanted premises is not required by your client for bona fide use in any manner.
10. Para 10 of your notice is absolutely wrong, and hence denied. You are requested to advise your client not to drag my client in unnecessary litigation and if your client chooses to do so, the same shall be defended at the risk, costs and consequences of your client which please note. Copy retained in my office for record. Yours faithfully, Sd/- (Inderjeet Singh) Advocate 30. A perusal of Ex.PW-1/6 shows that Mohan Lal admitted that he was a tenant of the subject premises under Rattan Lal Gupta and that the cooperative society had purchased the property from Shri Rattan Lal Gupta. 31. The contention urged by learned counsel for the appellant that the witness of the cooperative society has not deposed that he identifies the signatures of Inderjeet Singh on Ex.PW-6 amounts to the document not being proved. 32. We are afraid, the submission made is in

obvious ignorance of the law. 33. The witness of the bank, as noted above, categorically deposed that the bank received Ex.PW-1/6 in reply to Ex.PW-1/5 and that Ex.PW-1/6 was addressed by Shri Inderjeet Singh, Advocate under the instructions of Mohan Lal. This testimony of the witness of the bank has not been challenged. We repeat, the witness was not cross-examined. 34. Ex.PW-1/6 is an admission of the ownership and the fact that the cooperative society was the landlord. Ex.PW-1/6 is an admission of the receipt of Ex.PW-1/5 i.e. the notice determining the tenancy of Mohan Lal. 35. The appeal is frivolous. It is dismissed with exemplary costs. 36. We impose costs of Rs.25,000/- (Rupees Twenty Five Thousand only) on the appellant for indulging in a frivolous litigation. It has taken us 45 minutes to hear arguments and dictate judgment in Court. Valuable judicial time has been wasted by a litigious litigant. 37. Half the costs is directed to be paid to the respondent and the remaining half shall be deposited with the Delhi High Court Legal Services Committee within a period of 6 weeks from today. 38. Copy of the judgment be sent to all District Judges in Delhi who shall make available a copy to each Additional District Judge within their District. PRADEEP NANDRAJOG, J. J.R. MIDHA, J. DECEMBER 03, 2008 Dharmender Page 4 of 4 i.6