

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

Date of Reserve: 2<sup>nd</sup> February, 2010  
Date of Order: 25<sup>th</sup> March, 2010

**CM(M) No. 2151/2006**

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**25.03.2010**

**J.S.Panesar**

**... Petitioner**

Through: Mr. Manbir Singh, Advocate

Versus

**Santokh Singh & Ors.**

**... Respondents**

Through: Mr. S.S.Dahiya, Advocate &  
Mr. R.M.Sharma & Mr. Ranjit Dubey, Advocates

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

**JUDGMENT**

By the present petition under Article 227 of the Constitution of India, the petitioner has assailed concurrent judgment of two Courts below dismissing suit filed by the petitioner for possession of the premises in question. As this Court is not a Court of second appeal and the jurisdiction of this Court under Article 227 is limited, the only issue pressed before this Court is that the two Courts below wrongly came to conclusion that the notice served by the petitioner on the respondent/tenant stood waived while there was no plea of waiver taken by the respondent.

2. Brief facts relevant for deciding this petition are that the petitioner/landlord served notice dated 26.10.1998 on Smt. Bhupinder Kaur terminating her tenancy w.e.f. 30.11.1998 of the tenanted premises. At the time when notice was served the rent of the premises was Rs.25/- p.m., since

the tenancy was protected under Delhi Rent Control Act, he could not have filed a suit for eviction on the ground of termination of tenancy, therefore, no such suit was filed and the rent was continued to be accepted. However, the petitioner thereafter requested Smt. Bhupinder Kaur to increase rent and it is admitted by the petitioner in his evidence that his request was agreed to and the rent was increased from Rs.25/- p.m. to Rs.45 p.m. w.e.f. 1<sup>st</sup> December, 2001. It is not disputed that petitioner had been issuing rent receipts initially of Rs.25/- p.m. and thereafter of Rs.45/- p.m. In his testimony the petitioner also stated that this rent was increased after admitting Smt. Bhupinder Kaur as his tenant and she continued to pay rent to the petitioner regularly thereafter. The trial Court on the basis of this testimony of the petitioner came to the conclusion that the notice dated 26<sup>th</sup> October, 1998 served on Smt. Bhupinder Kaur stood waived and a new relationship came into existence and Smt. Bhupinder Kaur continued to be a contractual tenant @ Rs.45/- p.m. till her death. The learned ADJ in appeal upheld this contention.

3. It is contended by the petitioner that mere acceptance of rent on the part of petitioner after service of notice would not amount to waiver since the petitioner could not have filed an eviction petition as tenancy of Smt. Bhupinder Kaur was protected under Delhi Rent Control Act. The petitioner could not have allowed the premises to be occupied without rent therefore, he had to continue accepting rent and acceptance of rent would not amount to waiver unless and until it was intended by the petitioner to waive the notice. He relied upon 2006(1) RCJ 89 (SC) Sarup Singh Gupta v. S. Jagdish Singh & Ors. wherein Supreme Court had held that mere acceptance of rent cannot amount to waiver of notice unless there was other evidence to prove that the

landlord so intended. On the other hand counsel for the respondent submitted that it was a clear cut case of waiving of notice by conduct of the petitioner since the petitioner not only continued accepting rent @ Rs.25/- p.m. but later on increased the rent, admittedly treating Smt. Bhupinder Kaur as a tenant. If Smt. Bhupinder Kaur had not been a tenant and was living in the premises only under statutory protection of Rent Control Act then the landlord could not have increased the rent from Rs.25/- to Rs.45/- and the increase which he could have asked was as permitted by the provisions of Rent Control Act. The increase in the rent from Rs.25/- to Rs.45 p.m., almost double, showed that the landlord treated Smt. Bhupinder Kaur as tenant at new rate of rent and he gave up/waived his previous notice.

4. Waiver of notice by conduct is a well known concept in law. The acceptance of rent after expiry of notice by itself may not necessarily constitute a waiver but if the conduct of the parties goes to show that the parties intended to waive the notice and create a new tenancy, the waiver can be inferred from such conduct. In the present case when the notice was served the rent was Rs.25/- p.m. This rent continued from November, 1998 till October, 2001 when at the request of the landlord Smt. Bhupinder Kaur increased rent from Rs.25/- to Rs.45/-. That shows that the parties had given a go-bye to notice of termination of the tenancy and the landlord considered that let Smt. Bhupinder Kaur continue as a tenant & created a new relationship of tenancy with her by agreeing to higher rent. If the landlord had continued accepting rent of the premises under protest and had only insisted upon statutory increase by serving a notice, reminding the tenant that she was living in the premises because of statutory protection, the case would have

been different but here is a case where after service of notice the landlord requested the tenant to increase the rent from Rs.25/- to Rs.45/-. The tenant agreed to the same and thus a new tenancy got created in respect of the same premises at monthly rent of Rs.45/-. I consider that this conduct sufficiently reflects waiver on the part of the landlord. Under Section 113 of Transfer of Property Act, a notice stands waived on an act on the part of person giving it, showing an intention to treat the lease as subsisting, provided there is express or implied consent of the person to whom it is given. In the present case, once the landlord intended to continue the tenancy with Smt. Bhupinder Kaur at increased rent and Smt. Bhupinder Kaur agreed to it, the notice stood waived.

I, therefore consider that there are no merits in this petition. The petition is hereby dismissed.

**March 25, 2010**  
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**SHIV NARAYAN DHINGRA, J.**