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

+ RFA 784/2010, CM Nos. 19620/2012 & 1320/2013

% Date of Decision : 14th May,2015

HS BEDI ..... Appellant
Through : Mr. Suhail Dutt, Sr. Adv. with Mr. Vikas Tiwari, and Mr. Sankalp Goswami, Advs. along with appellant.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA ..... Respondent
Through : Mr. Chetan Sharma, Sr. Adv. with Mr. Sumit Gupta, Adv.

CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. The appellant has challenged the judgment and decree for Rs.8,93,892/- along with interest thereon @ 9% per annum passed by the learned Additional District Judge in favour of the respondent and against the appellant.

2. The appellant was the landlord and the respondent was the tenant of the property bearing no. B-529, New Friends Colony, New Delhi. For the sake of convenience, the appellant and the

respondent are referred to as the "landlord" and "tenant" respectively.

3. ***Relevant facts***

3.1. Vide registered lease deed dated 27th April, 1998, the landlord leased out property bearing No.B-529, New Friends Colony, New Delhi (hereinafter referred to as the "suit property") to the tenant for a period of three years with effect from 15th April, 1998 upto 14th April, 2001 at the monthly rent of Rs.1,85,000/- for the first two years and Rs.2,03,500/- for the third year. The tenant paid security deposit of Rs.12,21,000/- to the landlord refundable at the time of handing over of possession of the suit property.

3.2. On 26th March, 2001, the parties extended the lease upto 30th June, 2001. The terms of this extension are recorded in tenant's letter dated 26th March, 2001, relevant portion whereof is reproduced hereunder:

> "***As agreed to by you during the discussions, the lease period is extended up to 30.06.2001 or till the premises are vacated, whichever is earlier, on the existing terms and conditions without any increase in rent.***"

3.3. On 27th June, 2001, the parties further extended the lease for a period of three months upto 30th September, 2001. The terms of this extension are recorded in the tenant's letter dated 27th June, 2001. The relevant portion of the said letter is reproduced hereunder:

> "***As agreed to by you during the discussions, the lease period is extended up to 30.09.2001 or till the premises are vacated, whichever is earlier, on the existing terms***

and conditions without any increase in rent."

3.4. Vide letter dated 24th September, 2001, the tenant intimated the landlord that the suit property would be vacated on 30th September, 2001 and therefore, the landlord may depute his representative to take over the suit property. This letter was sent by the tenant to the landlord by courier. The landlord has denied the receipt of this letter. The letter dated 24th September, 2001 is reproduced hereunder:

> *"Shri H.S. Bedi,* *24.09.2001*
> *95, Golf Links,*
> *New Delhi-110003*
>
> *Sub: Handover of the premises at B-529, New Friends Colony*
>
> *Sir,*
>
> *Please refer to the Lease Agreement between you and M/s. National Highways Authority of India and Authority's letter dated 27.06.2001 in connection with lease of the above mentioned premises.* ***In this connection, it is to inform you that the premises will be vacated on 30.09.2001. Therefore, you may kindly depute your representative for taking over the premises.****"*
>
> *(Emphasis supplied)*

3.5. On 30th September, 2001, the tenant claims to have vacated the suit property and shifted to their own newly constructed office at Dwarka. However, the landlord did not turn up to take over the physical possession of the suit property.

3.6. Vide letter dated 1st October, 2001, the tenant intimated the landlord having vacated the suit property on 30th September, 2001

and once again requested the landlord to take the possession. The tenant further intimated the landlord that the tenant would not be liable to pay the rent and other charges w.e.f. 30th September, 2001. The letter dated 1st October, 2001 is reproduced hereunder:-

> *"Shri H.S. Bedi,* *1.10.2001*
> *95, Golf Links,*
> *New Delhi-110003*
>
> *Sub: Handover of the premises at B-529, New Friends Colony*
>
> *Sir,*
>
> *Please refer to the lease agreement between and M/s. National Highways Authority of India and Authority's letter of even no. Dated 27.6.2001 and 24.9.2001 in connection with lease of the above mentioned premises.* ***In this connection, it is to inform you that we have vacated your building on 30.09.2001. The building have could not handover so far because your representative was not available. You may kindly make arrangement for taking possession of the building immediately. It may please be noted that the rental and other liabilities of NHAI have cease to exist w.e.f. 30th September, 2001.*** *"*
>
> *(Emphasis supplied)*

3.7. On 6th November, 2001, the landlord inspected the suit property and noticed that all doors were damaged, locks were not working, keys were missing, windows were missing, all light fittings were broken or removed or not working.

3.8. Vide letter dated 9th November, 2001, the tenant reiterated the vacation of suit property on 30th September, 2001 and sought refund of security deposit from the landlord. The relevant portion of letter dated 9th November, 2001 is reproduced hereunder:

"Sh. H.S. Bedi *9.11.2011*
95, Golf Links, New Delhi- 110003

Sub : Handing over of the premises at B-529, New Friends Colony, New Delhi.

Dear Sir,

This is in continuation of our letter dt. 24.09.2001 and 01.10.2001 on the above mentioned subject.

The above mentioned premises have already been vacated by us w.e.f. September 30, 2001. Despite notice vide our above-referred letter, you were not present on September 30, 2001 to receive the possession of the above premises.

Your kind attention is invited to the terms of the lease according to which the amount of Rs.12,21,000/- (Rupees Twelve Lakhs Twenty One Thousand and Hundred Only) deposited as security is required to be refunded. You are now called upon to refund the security amount of Rs.12,21,000/- (Rupees Twelve Lakhs twenty one thousand and hundred only) from the receipt of this letter failing which you shall be liable to pay interest @ 18% p.a. on the said amount from the said amount became due to the National Highway Authority of India."

(Emphasis supplied)

3.9. On 16th November, 2001, there was a meeting between the tenant's Chairman and the landlord when the landlord requested the tenant to continue using the suit property.

3.10. Vide letter dated 17th November, 2001, the landlord admitted that the tenant's office premises have shifted out of the suit property but requested the tenant to continue using the suit property as its guest house for a further period of three years. The relevant portion of letter dated 17th November, 2001 is reproduced hereunder:-

"The Chairman *November 17, 2001*
National Highway Authority of India
Sector-X,
Plot No.5 and 6,
Dwarka,
New Delhi – 110045.

Dear Sir,

Reg. : B-529, New Friends Colony

This has reference to the meeting we had with you on 16.11.2001 regarding our above captioned premises under tenancy with you. This premises was Leased to you vide Agreement dated 27.04.98 for residential purposes. It has been used for residence of your directors as well as for Transit Guest House and your office. ***While your office premises have shifted out we would humbly request you to kindly continue using this premises as your guest house for further period of 3 years or as required by you for which we shall be highly grateful****."*

(Emphasis supplied)

3.11. Vide letter dated 24th December, 2001, the tenant rejected the landlord's proposal and once again requested the landlord to refund the security amount.

3.12. Vide letter dated 8th January, 2002, the tenant intimated the landlord that the tenant would be withdrawing the security guards from the suit property. The tenant further put the landlord on notice that the suit property had been vacated as back as on 30th September, 2001 and the landlord was not present there to take the possession despite notice. The tenant further put the landlord on notice that the tenant would not be liable for any loss or damage to the property after 30th September, 2001. In pursuance to the above

letter, the tenant withdrew the security guards from the suit property on 10th January, 2002. The parties also had a meeting on the said date. The letter dated 8th January, 2002 is reproduced hereunder:-

> *"To,*
> *Sh. H.S. Bedi*
> *95, Golf Link*
> *New Delhi-110003*
> *Sub : Handing over of the premises at B-529, New Friends Colony, New Delhi.*
> *Sir,*
> *The above mentioned premises have already been vacated by us w.e.f. 30th September, 2001. Despite notice given to you, you were not present on 30th September, 2001 to receive the possession of the above premises and also you have refused to accept and returned all the letters issued by our office in this regard.*
> *2. Left with no alternative, this authority will be withdrawing the security guards w.e.f. 10.01.2002 from the above premises and it will not be the responsibility of NHAI for any loss/damage that may be caused to the above premises after 30th September, 2001.*
> *3. As regards the security deposit, it is once again requested to refund the same immediately; as 18% interest will be charged for the period of delay in this regard."*

3.13. On 16th January, 2002, there was a joint inspection of the suit property. The tenant constituted a Committee comprising of DGM (Administration), Manager (Technical) and Assistant Manager (Administration) to assess the loss and damage to the suit property. The Committee upon inspection of the suit property opined that the suit property was in good and habitable condition except minor

wear and tear. The Committee recommended a sum of Rs.40,000/- to be paid to the landlord towards the repair of the normal wear and tear to avoid any confrontation. The same was conveyed to the landlord.

3.14. On 18th January, 2002, the landlord accepted the keys of the suit property from the tenant.

3.15. On 6th February, 2002, the landlord raised demand of Rs.15,83,966/- on the tenant after adjustment of the security amount of Rs.12,21,000/-.

3.16. On 8th February, 2002, the tenant again reiterated the demand for refund of security deposit after adjustment of the pending bills.

3.17. On 24th December, 2002, the tenant issued a legal notice for refund of the security amount along with interest.

3.18. On 4th February, 2003, the landlord sent a reply to the legal notice in which he raised the demand from Rs.15,83,996 to Rs.24,79,366/-.

3.19. On 21st August, 2003, the tenant filed a suit for recovery of Rs.14,28,366/- in which the landlord raised a counter claim for recovery of Rs.14,40,363/- towards arrears of rent, unpaid electricity/water bills up to 18th January, 2002, damages to the suit property and liquidated damages for unauthorized occupation.

3.20. The landlord contested the suit on various grounds *inter alia* non-receipt of the letters dated 24th September, 2001 and 1st October, 2001; the tenant did not vacate the suit property on 30th September, 2001; and that the tenant continued to use the suit

property up to 18th January, 2002. The landlord claimed liquidated damages @ Rs 2,03,500/- per month for the period of 15th September, 2001 to 30th September, 2001 and Rs. 4,07,000/- per month for the period of 1st October, 2001 to 18th January, 2002. The landlord also claimed damages to the suit property to the tune of Rs. 5,04,178/-.

4. The learned Trial Court held that the tenant had vacated the suit property on 30th September, 2001 in terms of letter dated 24th September, 2001 whereby the tenant had intimated the landlord of such vacation and had called upon the landlord to take over the possession. The Trial Court further held that there was a lapse on the part of the landlord to take over the possession of the suit property on 30th September, 2001 and therefore, the landlord was not entitled to the rent thereafter. The learned Trial Court rejected the claim of the landlord towards liquidated damages for the period 1st October, 2001 to 18th January, 2002. With respect to the claim of Rs.5,04,178/- towards damage to the property, the learned Trial Court held that the landlord has not proved the said expenditure incurred by him. The learned Trial Court decreed refund of security deposit of Rs.8,93,892/- along with interest @ 9% per annum to the tenant.

5. ***Submissions of the landlord***

5.1. The tenant was in possession of the suit property till 18th January, 2002 despite determination of the lease on 30th September, 2001 and therefore, the tenant was liable to pay pre-estimated liquidated damages of Rs.4,07,000/- per month in terms of para 8

of the lease agreement Ex.P-1.

5.2. Vide order dated 11th November, 2004, the learned Trial Court had directed the tenant to produce the complete gate passes and registers maintained by them upto January 2002 as well as record relating to the security agency named Group 4 Securitas Guarding (P) Ltd. employed at the suit property. However, the same was not produced and therefore, the Trial Court in its order dated 31st January, 2005 had observed that adverse presumption shall be drawn against the tenant for non-production of the relevant documents.

5.3. The tenant's witness PW-1 admitted in his cross-examination that the register produced before the Trial Court was not maintained date-wise. The entry of 30th October, 2001 has been shown between the entries of 7th November, 2001 and 21st November, 2001 to show the transfer of goods from the suit property in the month of October, 2001. On 30th October, 2001, five glasses and two wooden almirahs loaded from the suit property vide gate pass Marked 'A' and later on 15 items were loaded from the other premises and a consolidated gate pass was prepared but the same was never produced before the Trial Court. The tenant also concealed the gate passes post 10th October, 2001 to conceal the transfer of goods from the suit property.

5.4. The suit property was damaged due to reckless use by the tenant and the landlord was forced to incur huge expenses to the tune of Rs.5,04,178/- for restoration of the suit property.

5.5. The landlord filed CM 19620/2012 under Order 41 Rule 27

of the Code of Civil Procedure to prove the copy of the consolidated gate pass dated 30th October, 2001 in respect of the suit property.

6. ***Submissions of the tenant***

6.1. The lease of the suit property determined on 30th September, 2001 upon the expiry of the extended period of lease of three months provided in the letter dated 27th June, 2001.

6.2. The tenant vacated the suit property on 30th September, 2001. The prior intimation of the same was given by the tenant to the landlord vide letter dated 24th September, 2001. However, the landlord did not visit the suit property on 30th September, 2001 and therefore, the tenant vide letter dated 1st October, 2001 intimated the landlord of having vacated the suit property on 30th September, 2001. The tenant also informed the landlord that they were no more liable to pay the rent w.e.f. 30th September, 2001.

6.3. In compliance with the order dated 2nd November, 2004 of the Trial Court, the tenant filed the security arrangement with Group 4 Securitas Guarding (P) Ltd. on 17th November, 2001, register of incoming material maintained by Group 4 Securitas Guarding (P) Ltd. as well as gate passes along with the affidavit of PW-1. The gate passes so filed does not contain the gate pass dated 30th October, 2001 set up by the landlord. The gate pass dated 30th October, 2001 filed by the landlord relates to the other properties in Maharani Bagh, Kilokri and not to the suit property.

6.4. The landlord did not examine the contractor to prove the claim of Rs.5,04,178/- to prove the damage and repair of the suit

property.

7. The following questions arise for consideration in the present case:

(i) What are the obligations of the landlord and the tenant upon determination of lease under Section 111 of the Transfer of Property Act?

(ii) What are the consequences of the landlord's refusal/ failure to take the possession offered by the tenant?

(iii) Whether the tenant would remain liable to pay the rent/mesne profits in such cases?

(iv) What are the remedies available with the tenant in such cases?

8. ***Relevant Provisions of the Transfer of Property Act***

"***Section 108. Rights and liabilities of lessor and lessee***
(m) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of any defect in such condition; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left;

xxx xxx xxx

(q) on the determination of the lease, the lessee is bound to put the lessor into possession of the property."

*"**Section 111- Determination of lease***

A lease of immovable property determines-

(a) by efflux of the time limited thereby,

(b) where such time is limited conditionally on the happening of some event-by the happening of such event,

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event-by the happening of such event,

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right,

(e) by express surrender, that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them,

(f) by implied surrender,

(g) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease,

(h) 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."

Relevant Judgments

9. The law with respect to the obligations of the landlord and tenant upon determination of tenancy are well settled. Upon determination of a tenancy and offer of possession by the tenant, the landlord cannot refuse to take over the possession. If the

landlord refuses to take the possession, the possession shall be deemed to have been delivered to the landlord and the tenant would not be liable to pay the rent. The following judgments may be referred to in this regard:

9.1. In ***A.C. Raman* v. *Muthavally Seydali's Son Valiyakath Kaithakkal Kunhi Bara Haji*, AIR 1953 Madras 996**, the tenant gave the notice to the landlord that the tenanted premises were no longer required and therefore, the landlord should take back the possession. The tenant also offered to give the keys of the premises to the landlord. The landlord however refused to accept the premises on the ground that there was an understanding that the lease would not be surrendered. The tenant sent another notice reiterating that the premises would be surrendered on the notified date and the tenant would not be liable to pay the rent subsequent thereto. This was again objected to by the landlord who filed a suit for recovery of the rent against the tenant. The learned *Munsif* decreed the suit holding that the landlord was not bound to take the possession till the restoration of the premises by the tenant and, therefore, the tenancy continued and the tenant would be liable to pay the rent. The tenant challenged the said judgment before the Madras High Court. **The High Court allowed the appeal and held that the landlord, who refused to take the possession upon termination, cannot hold the tenant liable to pay any rent after termination.** The Madras High Court further held that the landlord was obliged to take over the possession and sue for damage to the property. The relevant portion of the judgment is reproduced

hereunder:

> *"...The plaintiff, it must be stated, has misconceived his remedy and by no stretch of imagination could it be said that the plaintiff, who has refused to take possession when possession was offered, could hold the defendant liable for any rents after the lease was terminated and after the plaintiff refused to take possession. The grounds alleged for refusing to take possession by the plaintiff were that the building was damaged and that until and unless the building is repaired, the plaintiff is not obliged or bound to take possession. Such a position seems to be wholly untenable.* ***When the lease has been terminated by a valid notice as provided for under S. 111 of the Transfer of Property Act and when possession has been offered and the plaintiff had refused to take possession, it cannot be held that the lease would still continue in favour of the plaintiff..."***
>
> *"In the present case it is not a case of any failure on the part of the defendant to deliver up vacant possession of the premises. On the other hand, it is quite patent that after terminating the tenancy the defendant went to the extent of offering the key of the premises and it was refused. And the refusal is on the ground that the building should be put in complete repair and then only the landlord would take possession. Such a position taken up by the landlord is wholly untenable. ...There is nothing in this section to compel the defendant, who has terminated the tenancy and who has offered to deliver vacant possession and whose offer has been refused more than once, to remain in the premises until the premises, which a recalcitrant tenant might have purposely or otherwise damaged, is put in a state of proper repair. If he fails to comply with any demand, however legitimate it might be, from the plaintiff, the remedy of the plaintiff would be to sue for damages for the neglect or default or other deliberate acts of the defendant. The remedy that the plaintiff has chosen in this case seems to be absolutely without any basis. The*

correct law, as pointed out by the learned counsel for the petitioner, has been laid down in – 'Baliramgiri v. Vasudev', 22 Bom 348 (D) and also in – Ábdul Qayum v. Mohammad Fazal Azim', AIR 1937 Lah 121 (E). When once a proper notice has been given and the tenancy has been properly terminated the plaintiff's right would be not to question the notice or the termination of the tenancy, but to claim damages for any loss caused to the plaintiff by reason of any wilful negligence or default on the part of the tenant. The learned Judges in the decision in 22 Bom 348 (D) have considered the question as to what is to happen if possession is not given after a valid notice.

"Does it continue the tenancy indefinitely, or does it give rise to a claim for damages on the part of the landlord? The latter appears to us to be its legal result."

This is what the learned Judges have observed and they relied upon the decision in (1860) 4 QB 170 (A) and they have observed that ***the measure of damages would be the extent of the loss of rent, which the landlord sustains during the actual period for which he was kept out of possession*** *and the expenses he was put to in recovering possession of the land. The learned Judges have further observed at page 354 that*

"It would be unreasonable to hold cultivators, like the defendants, liable for rent perpetually because the inamdar does not choose to demand or recover possession from the tenants, if he does not desire or treat them as his tenants."

"Even so in Abdul Gayum v. Mohammad Fazal Azim, AIR 1937 Lah 121(E), it has been held that ***the remedy of the landlord is to sue the tenant for damages, the measure of which is the rental value of the premises for the time he is kept out of possession, and the costs of the legal proceedings to oust the under-tenant from wrongful possession if the tenant fails to deliver vacant possession after termination of notice.*** *But in the*

present case the facts are on a much stronger footing. Here the tenant has not merely terminated the tenancy but also offered to deliver vacant possession by giving the key. The plaintiff wilfully would not take possession on the ground that the premises remained damaged and it should be repaired and put in a tenantable condition before the plaintiff would take up possession. The passage quoted by the learned counsel for the petitioner which appears at page 724 of Woodfall's Law of Landlord and Tenant, is more apposite than the passage quoted by the learned counsel for the respondent with regard to the liability of the tenants and the rights of the landlords to recover damages in case the property is not kept in a state of repair and tenantable condition. ...I am of opinion that the decision of the learned District Munsif is wholly wrong and untenable and he ought to have held that the plaintiff was not entitled to recover any rent or any damages for the period for which he laid this suit. On the other hand, the plaintiff should have been directed to seek the proper remedy by taking possession of the property and then to sue the defendant for the recovery of damages that has been caused to the property of the plaintiff. Instead of doing so, the plaintiff has misconceived his remedy and the learned District Munsif has fallen into the error of accepting that that was the proper remedy for the plaintiff."

(Emphasis supplied)

9.2. In ***Raja Laxman Singh* v. *State of Rajasthan*, AIR 1988 Rajasthan 44**, the tenant terminated the tenancy and offered the vacant possession of the premises to the landlord who, however, refused to take possession and put conditions to it. **The Rajasthan High Court held that the possession shall be deemed to have been delivered as soon as the property was vacated**. The relevant portion of the said judgment is reproduced hereunder:-

"23. ...<u>Vacation of the property together with a notice to the landlord to take the delivery of the possession is submission for the purpose of restoration of the possession and, any impediment put up by the landlord in the matter of redelivery of the possession and not accepting the possession on the ground that some terms and conditions will have to be fulfilled will amount to the delivery of possession and it shall be deemed for all purposes that as soon as the property has been vacated the possession has been delivered though the landlord may not accept the possession..."</u>

24. Dy. Government Advocate, Mr. Rafiq, has cited before me the case of President of F. 1250 Chowghat Firka P.C.C. Co-operative Society Ltd., A.C. Raman v. Muthavally Seydali's Son Valiyakath Kaithakkal Kunhi Bara Haji, AIR 1953 Mad 996. Their Lordships in para 5 has held that the landlord cannot challenge notice or termination of tenancy but must sue for damages for wilful negligence of tenant. There is nothing in the section to compel to defendant who has terminated the tenancy and who has offered to deliver vacant possession and whose offer has been refused by the landlord on the ground that the possession shall be taken back only on the payment of Rs. 5,000/- by way of damages. If the tenant fails to comply with the demand for damages, however, legitimate it might be the plaintiff will have a right to sue for damages for the negligence, default or other acts of the defendant. The remedy which the plaintiff has chosen in this case that he shall take possession only when the conditions are fulfilled i.e. when the damages are paid is absolutely without any basis.

25. Their Lordships in the case of Abdul Qayum v. Mohd. Fazal Azim, AIR 1937 Lah 121 have held that, once a proper notice has been given, plaintiff's right would be not to question the notice of the termination of the tenancy but to claim damages for any loss caused to the plaintiff by reason of any wilful

negligence or default on the part of the tenant. ***…For the reasons mentioned above, I am of the view that the plaintiff has already created such situation by which he cannot get any relief whatsoever and he cannot claim any right of rent against the State.*** *S. 111 of the Transfer of Property Act is illustrative and there may be some more contingencies by which it can be said that the tenancy has come to an end or has been determined."*

(Emphasis supplied)

9.3. In ***Onida Finance Limited v. Malini Khanna*, 2002 (3) AD (Delhi) 231**, the tenant terminated the lease by a one-month notice and called upon the landlord to take the vacant possession of the tenanted premises on the expiry of the notice period and return the security deposit and unadjusted advance rent. The tenant further notified the landlord that the tenanted premises shall remain vacant at the risk of the landlord and the tenant shall not be liable to pay the rent from that date. The landlord, however, did not take the possession whereupon the tenant filed a suit for recovery of the security and unadjusted advance rent before this Court and deposited the keys in Court. The landlord contested the suit on various grounds *inter alia* that the entire security and the advance rent have been adjusted in the rent after the termination. The landlord filed a counter claim to claim the rent upto the date of taking the keys from Court. **This Court held that the landlord cannot refuse to take possession upon termination of lease by notice and offer of possession.** The findings of this Court are reproduced hereunder:

> *"28. **It is trite that when the lease is terminated by notice and the possession is offered, the landlord cannot refuse to take the possession. If the landlord refuses to take the possession, the lease would not continue. Therefore, even if the contention of the defendant herein was that the tenancy was for a period of three years, she could take possession and thereafter sue the plaintiff for rent. She did not do so. She took calculated risk by challenging the action of the plaintiff in terminating the tenancy and avoided to take possession.***
>
> *29. ... It is held that the plaintiff had offered to surrender the actual vacant possession of the premises and it is he defendant who did not take the possession thereof on 15th February, 1997 although offered by the plaintiff. Therefore, the valid surrender of the tenanted premises took place on 15th February, 1997 even when the actual possession was taken on 13th September, 1997 when the keys of the tenanted premises were taken by the defendant which was deposited by the plaintiff while filing the suit."*
>
> (Emphasis supplied)

9.4. In ***Uberoisons (Machines) Ltd.* v. *Samtel Color Ltd.*, 2003 (69) DRJ 523**, the tenant terminated the lease and called upon the landlord to take the possession of the tenanted premises. The Company Secretary of the landlord visited the tenanted premises on the notified date but found the premises not restored to the condition in which the premises were taken. The tenant thereafter restored the premises and again called upon the landlord to take over the possession and refund the security deposit. The landlord was not willing to refund the security deposit and therefore, the possession continued with the tenant. The landlord filed a suit for possession, recovery of rent, mesne profits and damages against the

tenant. During the pendency of the suit, the tenant handed over the possession to the landlord. This Court held that the tenant cannot withhold the possession until security amount is refunded to him. This Court further held that the tenant has an independent remedy to recover the security amount and if the tenant chooses to withhold the premises, he shall be liable to pay the rent upto the date of handing over of the possession. The relevant portion of the judgment is reproduced hereunder:

> *"10. The conspectus of the facts pleaded by both the parties in their respective pleadings makes one thing clear that both the parties were engaged in tug of war. The plaintiff was not willing to refund the security as according to him premises were damaged by the defendant and he had to incur considerable expenses in order to bring back to their original position. On the other hand, the defendant insisted that he should be paid back the security first and only then he would hand over the possession. None of them realised that by engaging in such fissiriparious stands both the parties were at loosing end.*
>
> ***11. The security is paid to the landlord for the purpose of guarantee that no damage is done by the tenant nor any fixtures and fittings are removed and every landlord is entitled to use the security for repairing the damages done by the tenant. Though the security cannot be adjusted towards arrears of rent but in case the tenant hands over possession of the premises without any damage, the landlord has no right to retain the security.*** *In such an event the landlord can be liable to pay the interest as any amount retained by the landlord unauthorisedly by way of security incurs liability of interest. The stand taken by the defendant in respect of installation of A.C units etc and installations of additional fittings and fixtures shows that he has done*

this for the improvement of the premises for making the utmost use of the premises for his business purposes. Though Local Commissioners were also appointed for ascertaining damages done to the premises but the very fact that additional fittings and fixtures and A.C units were installed with the full knowledge of the plaintiff and the plaintiff did not take any action for making such provision in the premises shows what was done in the premises was with the approval of the landlord. It appears that main concern of the plaintiff was restoration of electricity connection. According to the defendant when he stopped using the premises he also disconnected the electricity connection so as to avoid hazardous incident and also to avoid misuse of electricity by chowkidars. Somehow or the other when the plaintiff insisted for restoration of electricity, the defendant restored the same.

12. Now the question arises whether the tenant could have retained the possession of the premises without paying the rent thereof on account of non-refund of security amount by the plaintiff. The answer is emphatic 'no'. ***The tenant has an independent remedy to recover the security but in no way can retain the possession of the premises on the plea that until and unless security is refunded, possession will not be handed over. Such a possession by the tenant is a possession for which he has to pay the rent as the premises could not have been put in use by the landlord nor have been let out by the plaintiff.*** *No tenant can take the defence that he is entitled to retain the possession of the premises unless security amount is refunded to him. When there is an independent remedy to recover this amount, the retention of possession cannot be justified. In order to avoid the liability of rent, the tenant has the obligation to handover the possession. It is immaterial whether premises was put into use by the defendant/tenant or not. What is material was whether possession is retained by him or not.*

13. In view of this position of law, the suit of the plaintiff has to be decreed in respect of recovery of arrears of rent upto the period the possession was retained by the defendant..."

(Emphasis supplied)

9.5. In ***Tamil Nadu Handloom Weavers' Society*** **v.** ***Harbans Lal Gupta,*** **2009 (107) DRJ 418 (DB)**, the tenant terminated the lease by a three months notice in terms of the lease deed and demanded the balance security deposit from the landlord. However, the landlord refused to take back the possession and raised various issues with respect to the non-restoration of the suit property as well as non-payment of electricity and water charges whereupon the tenant filed a suit for mandatory injunction and recovery of security deposit. The landlord made a counter claim for recovery of rent up to the date of possession as well as damages to the suit property. The Trial Court appointed a Local Commissioner to visit the suit property and take photographs of the same. The keys of the suit property were handed over to the landlord in the presence of the Local Commissioner. The Trial Court decreed the tenant's suit and dismissed the landlord's counter claim which was challenged before this Court. **The Division Bench of this Court relying upon *Raj Laxman Singh* (supra) and *A.C. Raman* (Supra) held the termination of the lease by the tenant to be valid.** This Court however held the tenant to be liable to pay the rent up to the handing over of the possession because fixtures and fittings were removed only after inspection of the Local Commissioner.

9.6. In ***Tikka Brijinder Singh Bedi v. Metso Minerals (New Delhi) Pvt. Ltd.,*** **(2010) 114 DRJ 653**, the tenant terminated the lease and called upon the landlords to take the possession of the tenanted premises on the notified date and simultaneously return the security deposit of Rs.44.46 lakhs. However, the landlords neither came to take over the possession nor paid the security deposit on the ground that the tenant had not restored the premises in the condition in which it was given whereupon the tenant filed the suit for recovery. During the pendency of the suit, the possession was ultimately taken over by the landlords. The tenant claimed the refund of security deposits of Rs.44.46 lakhs whereas the landlords claimed the rent from the date of termination upto the date of possession. The disputes between the parties were referred to the Arbitrator, who allowed the tenant's claim for refund of security deposits and rejected the landlords' claim for the rent after termination. The landlords filed the objections to the award, which were rejected by this Court. The findings of this Court are as under:

> *"16. A conjoint reading of the aforesaid clauses show that the handing over vacant possession is simultaneous to the refund of the security deposit. However, the refund of the security deposit, by its very nature, is to be made after adjusting the claims of the landlords for the dues of the lessee with respect to the leased premises and there is no contrary intention or clause is the lease deed..."*
> *"17. ...The Arbitrator in substance has held that the respondent cannot be said to be guilty in failing to handover the possession on 15.4.2000, inter-alia, firstly because there appeared to be discussions with regard to*

the petitioners wanting to take over the furniture and fixtures in the premises and secondly because of the disinclination of the landlords to refund the security deposit, especially at one go... ***After all, the respondent gained nothing by letting the possession of the premises remain with it, because, the respondent had already shifted from the subject premises in April 2000 itself.*** *A premises was taken by them on rent and documents with respect thereto have been filed. It is also an admitted fact which is on record that the subject premises was vacant during the disputed period 16.4.2000 to 22.3.2002 and which becomes clear from the nominal electricity consumed during this period. Also, and admittedly, the respondent had vacated the other floors of the same building in April, 2000 itself after carrying out the required restoration and taking back the security deposits from the landlords of the other floors. Thus, the aforesaid facts show that* ***there was no benefit to the respondent in continuing possession*** *and the findings of the Arbitrator, and who is a final fact finding authority, cannot be set aside by this Court while hearing objections as per the scope and the legal parameters of Section 34 of the Arbitration and Conciliation Act, 1996. With the aforesaid facts, it is also to be additionally noted* ***that the petitioners had been dillydallying in refund of the security deposit*** *by seeking to repay the security deposit amount in instalments whereas the security deposit amount has to be repaid in one lump sum (and not in instalments) at the time of handing over of the vacant possession. Further, a reference to the reply filed by the petitioners in the Arbitration proceeding do not show specific details as to what repairs the respondents did not carry out in the premises and how could not the leased premises be said to have been in a proper state for taking back its possession. Reference to para (h) at page 6 of the reply filed by the present petitioners before the Arbitrator shows that the petitioners are delightfully*

vague as to what was the work which was not carried out by the respondent. This aspect of the matter is indeed relevant because the respondent had written its letter dated 5.5.2000 in which it was stated that the premises were ready for being handed over and the same was after carrying out the work as per the stand of the respondent, and which work the respondent claimed was done pursuant to the requirements contained in the letter dated 18.4.2000 sent by the petitioners to the respondent....."

"...Lastly, I feel that there appears to be a ring of truth in the stand of the respondent, because, if the petitioners were sincere or genuine, and that assuming that requisite work was not done by the respondent towards repair and restoration, surely it was open to the petitioners to retain such amount as it thought fit out of the total security deposit of Rs.44,46,000/-and refund the balance amount *on 15.4.2000 when premises were sought to be handed over by the respondent to the petitioner. Admittedly, this was not done by the petitioners though such a course of action was open to them if they wanted to act bonafidely. I may in this regard also refer to Clause 12 of the 1998 lease deed which envisages the position that the lessor in fact can be asked to do the work of repairs and renovation of the premises, subject of course to payment of costs by the lessees and meaning thereby that it is not that the lessee only had to carry out the repair work, and the same could well have been done by the petitioners/landlords by retaining a part of the security deposit. Therefore, it becomes quite clear that the petitioners were refusing to part with the possession of the monies which they had in the form of security deposit of Rs.44,46,000/-. This could have been because the petitioners did not have the entire/requisite funds or that they had just about enough funds but were deliberately delaying or were acting malafidely....."*

(Emphasis supplied)

9.7. In ***Kamal mangla v. Tata finance ltd.,*** **2011 ILR 3 Delhi 682,** the tenant issued a 15 days notice to the landlord informing him that the tenanted premises were no longer required and therefore, the landlord should take possession back and return the security deposit failing which the tenant would not be liable for any further rent. However, the landlord neither turned up to take the possession nor returned the security amount. The tenant filed a suit for recovery of the security deposit. **This Court held that, the lease was validly terminated and therefore, the tenant was not under the obligation to pay rent after the offer of possession to the landlord.** The Court decreed the suit for recovery of security deposit after adjustment of damages and held as under:-

> *"28. ...The case of the Plaintiff company is that despite their having written various letters to the Defendants requiring them to take possession of the tenanted premises, the Defendants failed to take possession from them and, therefore, they are not liable to pay rent for the period subsequent to September, 1999. As noted earlier, the plea taken by the Defendants on receipt of the letter dated 29th September, 1999 was that the Plaintiff company was required to serve six months' notice and keep on paying rent to them during notice period. The stand taken by the Defendants was not in accordance with law as held by me while deciding the issue No. 3. Therefore, the Defendants could not have insisted on six months' notice being given to them by the Plaintiff company as a precondition to take possession of the tenanted premises. On receipt of the letter dated 29th September, 1999 from the Plaintiff company, the Defendants ought to have gone to the office of the Plaintiff company and taken possession of the tenanted premises from them. They, however, failed to take possession despite willingness of the Plaintiff company in this regard. Vide*

letter dated 19th February, 2000 (Exhibit P-7), Defendants Kamal Mangla and Sneh Lata Mangla wrote to the Plaintiff company that they had come to take possession but the possession was not given to them. However, the letter does not indicate the day on which they had gone to take possession nor does it indicate the place where they had gone and the person to whom they had met. In the natural course of human conduct, if the tenant despite offering possession to the landlords refuses to deliver possession to them, the landlords would immediately write to him specifying the day as well as the time they approached the tenant to take possession, the person whom they met and the exact response of that person to their request to hand over possession to them. It has come in the testimony of the witnesses of the Plaintiff that the Plaintiff company had vacated the tenanted premises and started functioning at the new premises with effect from 1st September, 1999. The Plaintiff company also published an advertisement in "Hindustan Times' New Delhi on 27th August, 1999 informing the public at large that from 31st August, 1999, they were consolidating their regional office under one roof and were shifting from 3rd and 4th floor of New Delhi House, Barakhamba Road, New Delhi to 4th Floor, Kanchenjunga Building, 18, Barakhamba Road, New Delhi. The Plaintiff company, therefore, had no incentive to continue to hold possession of the tenanted premises and thereby incur liability towards payment of rent and other charges, when it was no more using those premises. It would be pertinent to note here that there is no evidence to prove that the Plaintiff company was actually carrying out any activity in the tenanted premises after September, 1999. PW-3 Vaideghi Sreedharan, who was employed as a receptionist with the Plaintiff company at the relevant time, has specifically stated in her affidavit that the branch office was functioning from Flat No. 401, New Delhi House, 27, Barakhamba Road, New Delhi till 31st August, 1999 and thereafter the Plaintiff company had completely vacated the aforesaid premises and shifted the entire branch office to

new premises at Kanchenjunga Building, 4th Floor, 18, Barakhamba Road, New Delhi-110001 with effect from 1st September, 1999. In fact, according to her, she on the instructions of Assistant General Manager of the Plaintiff company contacted the Defendants a number of time on telephone and requested them to come and take keys and possession of the tenanted premises. She claims to have spoken to P.S. Mangla and Kamal Mangla several times in this regard and, according to her, both of them were evasive in their replies on this issue and did not agree to take back the keys and possession of the premises. According to her, Mr. Kamal Mangla had gone to the extent of shouting on her on telephone and telling her that they would talk only to Ratan Tata on the issue. PW-4, Ram Kumar Tiwari, is an executive with the Plaintiff company. He also stated that the Plaintiff company had completely vacated the tenanted premises and shifted to Kanchenjunga Building with effect from 1st September, 1999. No positive evidence has been led by the Defendants to controvert the deposition of these witnesses and to prove that the Plaintiff company continued to carry on business from the tenanted premises even after September, 1999. I, therefore, have not hesitation in holding that the Plaintiff company was not using the tenanted premises after September, 1999, it had offered possession to the Defendants and the Defendants, who were insisting on six months' notice, were not willing to take possession."

"33. ... However, neither of these two judgments apply to the facts of the case before this Court, since there is no evidence or even allegation that the Plaintiff company was insisting on refund of the security deposit before handing over possession of the tenanted premises to the Defendant though, vide letter dated 16th December, 1998 (Exhibit PW1/1 and PW1/2) terminating the tenancy with effect from 15th June, 1999, receipt of which has been denied by the Defendants, the Plaintiff had requested the Defendants to take possession against refund of security deposit. While writing the letter dated 29th September, 1999, the Plaintiff

company did not insist of refund of the security deposit as a pre-condition of handing over possession to Defendant though it did demand the refund of security lying with the Defendants. ***This is not the case of the Defendants that when they went to take possession of the tenanted premises, the Plaintiff company refused to hand over possession to them on the ground that the security deposit had not been refunded to it. There is no averment to this effect even in the letter dated 19th February, 2000 (Exhibit P-7) written by them to the Plaintiff company****. Seeking refund of the security while asking the lessor to take possession of the tenanted premises is altogether different from insisting upon payment of security deposit before handing over possession of the tenanted premises. Had the Plaintiff company insisted on refund of the security deposit before handing over possession of the tenanted premises to the Defendants, it would certainly have been liable to pay rent to the Defendants till the time possession was actually delivered to them but, the evidence on record does not make out any such insistence on the part of the Plaintiff company. In fact, since the security deposit agreement (Exhibit P-11) with respect to security deposit provided that the security would be refundable on expiry of the lease or on vacation of the premises by the lessee, whichever be earlier against handing over peaceful vacant possession of the flat, furnishing and fittings in good conditions and after deducting dues, if any, the Plaintiff company, in my view, could have insisted on simultaneously refund of the security deposit while handing over possession of the tenanted premises to the Defendant, though it could not have insisted on the security being refunded to it before handing over possession to the Defendant. In fact, the evidence on record does not indicate even that the Plaintiff company was insisting on refund of the security simultaneous with handing over possession to the Defendants. It transpired during arguments that rent upto September, 1999 stands paid to the Defendants. In view of the above discussion, I hold that the Plaintiff*

company was not required to pay rent after September, 1999."

"41. Since the security deposit was lying with the Defendants and it became payable on the date constructive possession was delivered to the Defendants, the Plaintiff in CS(OS) No. 2569/2000 is entitled to interest on the aforesaid amount in terms of Section 3 of the Interest Act, which to the extent it is relevant, provides that in any proceedings for the recovery of any debt or damages or in any proceedings in which a claim for interest in respect of any debt or damages already paid is made, the court may, if it thinks fit, allow interest to the person entitled to the debt or damages or to the person making such claim, as the case may be, at a rate not exceeding the current rate of interest, if the proceedings relate to a debt payable by virtue of a written instrument at a certain time, then, from the date when the debt is payable to the date of institution of the proceedings."

(Emphasis Supplied)

9.8. In ***Associated Journal Limited*** **v.** ***ICRA Ltd.,*** **MANU/DE/0851/2012**, a lease for eight years was terminable by a three months notice or three months rent in lieu thereof. The tenant terminated the lease by a notice in writing and called upon the landlord to adjust three months rent in lieu of notice period and refund the security deposit and take the possession. The landlord however, failed to take the possession whereupon the tenant instituted a suit for recovery of security deposit and deposited the keys in the Court. **This Court held the termination of lease and possession offered by the tenant to be valid. This Court further held that the constructive possession would be deemed to be with the landlord and a decree for recovery of security deposit was passed in favour of the tenant.** The findings of this Court are

as under:

> *"19. From the aforesaid correspondence between the plaintiff and the defendant, the admitted position that emerges is that the plaintiff terminated the lease there upon calling the defendants to take possession of the demised premises and refund the balance security amount.* ***The offer to vacant possession of the demised premises was always there from the side of the plaintiff company and it was the duty of the defendant thereafter to act on the same and take possession after notice of termination of the lease. It is the therefore defendant company who has failed to comply with the same. It may also be seen that during this period the plaintiff even communicated to the defendants about their shifting to another premises which the defendants did not take note of. Thus as far as handing over of the possession of the demised premises is concerned, it may be said that constructive possession was handed over to the defendants by the plaintiff upon termination of the lease with an offer to take over actual possession upon payment of the balance security deposit, which was sufficient to fulfill the requirement of clause 8 of the lease agreement.*** *Following circumstances would lend support to inferences/findings:*
>
> *It is the plaintiff who terminated the tenancy by notice dated 18-11-1997 w.e.f. 19-11-1997 and offered the possession to the defendants.*
>
> *The defendants' reaction to that was that the plaintiff could not terminate the tenancy on the grounds which were as alleged vague and baseless and wanted to negotiate and settle the matter. Therefore, the unwilling party to take possession on termination of the lease was the defendant company and not the plaintiff company.*
>
> *A perusal of the documents filed and the deposition of Mr. Vijay Wadhwa (PW-1) shows that several reminders were given to the defendants vide letters*

dated 17-02-1998, 16-04-1998, 30-04-1998, 20-07-1998,05-09-1998 to take possession of the demised premises but it is the defendants who did not act on the same.

The letter dated 05-09-1998 shows that through a letter dated 16-04-1998 the plaintiff also indicated to the defendants that they had shifted to a new premises and that the demised premises was no more being used by them. ***The plaintiff had nothing to gain by retaining the premises but by not taking the possession the defendants could definitely make a claim for rent against the plaintiff which has been done in the present case.*** *The plaintiff while determining the lease did not demand possession forthwith but demanded possession in terms of Clause 4. The defendant failed to take possession within seven days and thereafter refund of security became due. The application of the defendant to repay the security amount thus came into force on 27.11.1997 and if the defendant did not take possession till that date or thereafter, it does not absolve the defendant of the liability to refund the amount.*

After the notice of termination dated 18-11-1997 by the plaintiff and its reply thereon dated 22-11-1997 by the defendants, it has been the plaintiff who wrote a letter dated 17-02-1998 of reminder to the defendant stating to refund the security amount along with interest and take the possession of the demised premises.

Thereafter, also it is the plaintiff who has filed the present suit for recovery on 6-11-1998 along with an application seeking directions to the effect that the defendants take the possession of the demised premises and offered keys along therewith which were given to the defendants in the court itself on 07-12-1998.

20. Learned counsel for the plaintiff has relied upon the judgment of ***Onida Finance limited v. Mrs. Malini Khanna****,* 2002 III AD (Delhi) 231 *wherein it was held that although the plaintiff had taken appropriate steps*

by offering the possession of the premises to the defendant, it is the defendant who did not take possession. The plaintiff therefore discharged its obligation under law. Hence, if the defendant avoided to take possession, the defendant cannot be permitted to take advantage of its own wrong. This position has been reiterated in the case of ***Raja Laxman Singh v. State of Rajasthan****,* AIR 1988 Raj 44.

21. ***Taking into consideration the aforesaid, I am of the view that when possession of the tenanted premises is offered upon termination of the lease, the landlord/lessor must act upon the same and cannot refuse to take the possession. If the lessor/landlord refuses to take the possession or act upon the offer being made, the lease would not continue and therefore the contention of the defendant that the plaintiff had been in continued possession of the demised premises making him liable to pay the rent for the same would not stand. In such a case, the plaintiff who has done the needful on this part is left with no other option but to remain in possession of the said premises. DW1 in fact admitted in his cross examination that he was aware that the plaintiff had shifted their operational work to different offices at Kailash Building, Kasturba Gandhi Marg.*** *The defendant has tried to take advantage of a letter dated 28.05.1998 sent on behalf of the plaintiff asking the air conditioning services to be restored. The said letter cannot be of much assistance since the plaintiff was compelled to remain in the premises for security reasons and had deputed a person and naturally the air conditioning should be functioning for the same."*

(Emphasis Supplied)

The landlord challenged aforesaid judgment of the learned Single Judge. The Division Bench dismissed the appeal of the landlord and **held that the vacation of the leased property by the tenant**

together with a notice to the landlord to take the delivery of possession would sufficiently discharge the tenant from further obligation to pay the rent. The Division Bench further held that the possession shall be deemed to be delivered to the landlord as soon as the property was vacated and the possession offered. The Court further held that the landlord can sue for damage to the property but he cannot decline to receive the possession on that ground. The relevant findings of this Court are reproduced hereunder:

> *"15. Thus, it was the absolute right of the respondent to terminate the lease by either giving three months' prior notice of the lease being determined or rent in lieu thereof. This right was not contingent upon any default committed by the appellant."*
>
> ***"17. Now, Section 111 of the Transfer of Property Act deals with the modes of determination of the lease and vide clause (e) thereof provides that a lease can be determined by express surrender and vide clause (f) by an implied surrender. Clause (h) deals with the notice of intention to determine the lease.*** *It is true that as per clause (q) of Section 108 of the Transfer of Property Act, the lessee is bound to put the lessor in possession of the property leased, but this would mean that it is inherent that the landlord should accept the possession of the property whenever it is delivered and cannot claim a right to receive the possession only upon the lessee paying dues or otherwise. We highlight immediately, that in the instant case, it is not the case of the appellant that it had any dues, by way of damages or otherwise, against the respondent.* ***Vacation of a leased property by the lessee together with a notice to the lessor to take delivery of the possession would sufficiently discharge the lessee of any further obligation to pay the rent and any impediment put by***

the lessor in the matter of delivery of possession would amount to possession being delivered and it shall be deemed for all purposes that as soon as the property was vacated and possession offered, constructive possession would be with the lessor. Even if the lessor has any claim, by way of damage to the property or otherwise, the right of the lessor is not to decline to receive possession and then insist that further lease rental had accrued each month. The right of the lessor is to sue and recover the damages."

(Emphasis supplied)

10. ***Summary of Principles of law*:**

From the analysis of the above decisions and the provisions with which we are concerned, the following principles emerge:-

10.1. ***Determination of lease*** - Section 111 of the Transfer of Property Act provides various modes of determination of lease such as determination by efflux of time [Section 111(a)]; expiry of the period of notice of termination [Section 111(h)]; express surrender [Section 111(e)] and implied surrender [section 111(f)].

10.2. ***Obligations of the landlord and the tenant upon determination of lease*** - The tenant is bound to handover the vacant and peaceful possession of the tenanted premises to the landlord upon determination of lease [under Section 108(q)].

10.3. ***Duty of tenant to restore the tenanted premises*** -The tenant is bound to restore the tenanted premises in the same condition in which it was taken.[Section 108(B)(m].

10.4. ***Remedy of landlord in the event of non-restoration by the tenant*** - In the event of non-restoration of the tenanted premises to their original condition, the remedy of the landlord is to adjust the

damages in the security deposit or sue the tenant for damages after taking over of the possession.

10.5. ***Landlord cannot refuse to take over the possession upon determination of lease and offer of possession by the tenant*** - The landlord, upon determination lease and offer of possession by the tenant, cannot refuse to take over the possession on the ground that the property has been damaged or not restored to its original condition.

10.6. ***Consequences of the landlord refusing to take the possession offered by the tenant*** **-** In the event of refusal of the landlord to take the possession offered by the tenant, the possession shall be deemed to have been delivered to the landlord and the tenant shall not be liable to pay the rent thereafter.

10.7. ***Consequences of the tenant refusing to handover the possession*** **-** If the landlord is ready to accept the possession but the tenant refuses/fails to handover the possession, the liability of the tenant to pay the rent shall continue till the handing over of the possession.

10.8. ***Remedy of tenant in case of non-refund of security deposit by the landlord*** – The tenant cannot refuse to hand over the possession till the security deposit is refunded. In the event of non-refund of security deposit by the landlord, the remedy of the tenant is to sue the landlord for refund of security deposit after handing over the possession.

11. ***Findings***

11.1. The period of registered lease deed dated 27th April, 1998 in

respect of the suit property expired on 14th April, 2001. However, the parties, vide letters dated 26th March, 2001 and 27th June, 2001 mutually extended the lease upto 30th September, 2001. The extended lease determined by efflux of time on 30th September, 2001 when the tenant was obliged to handover the possession of the suit property to the landlord under Section 108(q) of the Transfer of Property Act.

11.2. Vide letter dated 24th September, 2001, the tenant intimated the landlord that the suit property would be vacated on 30th September, 2001 and therefore, the landlord may depute his representative to take over the possession. This letter was sent by the landlord to the tenant by courier at the correct permanent address of the landlord who has not specifically denied this letter in para 5 of his written statement.

11.3. On 30th September, 2001, the landlord was obliged to visit the suit property to take over the possession of the suit property from the tenant. However, the landlord admittedly did not visit the suit property on 30th September, 2001.

11.4. Vide letter dated 1st October, 2001, the tenant intimated the landlord that the suit property has been vacated on 30th September, 2001 and once again requested him to take the possession. The tenant further notified the landlord that the tenant would not be liable to pay any rent or damage charges w.e.f. 30th September, 2001.

11.5. The letter dated 1st October, 2001 was sent by the tenant to the landlord by speed post at the correct address of the landlord

and the postman visited the landlord's address four times on 3rd and 4th October, 2001 but the addressee was not available. The report does not show that the premises were locked. It can therefore be safely presumed that the landlord who had received the letter dated 24th September, 2001, was aware of the context and therefore, deliberately did not receive the letter. There is also no explanation why family member and/ or staff of the landlord did not receive the letter from the postman. As such, the letter dated 1st October, 2001 is deemed to have been received by the landlord.

11.6. The letters dated 24th September, 2001 and 1st October, 2001 have been duly proved by the tenant and therefore, this Court finds no justification for the landlord to have not visited the suit property on 30th September, 2001.

11.7. The denial of the duly proved letters dated 24th September, 2001 and 1st October, 2001 by the landlord does not appear to be true and is therefore rejected.

11.8. Even assuming for the sake of argument that the landlord did not receive the letter dated 24th September, 2001, the landlord admittedly was well aware that the lease was coming to an end on 30th September, 2001 and since the tenant had not made any request for further extension, the landlord was expected to have visited the suit property to take the possession thereof. No justification whatsoever has been given by the landlord for having not visited the suit property on 30th September, 2001.

11.9. Since the landlord failed to visit the suit property to take

over the possession of the suit property from the tenant on 30th September, 2001 without any justification, the possession of the suit property is deemed to have been delivered to the landlord on 30th September, 2001.

11.10. Since the lease stood determined on 30th September, 2001 and the possession of the suit property has been deemed to have been delivered to the landlord, the tenant is not liable to pay rent/mesne profits after 30th September, 2001**.**

11.11. This case is squarely covered by the well settled principles summarized in para 10 above laid down in ***A.C. Raman*** **(**supra), ***Raja Laxman Singh*** **(**supra**),** ***Onida Finance Limited*** (supra)**,** ***Uberoisons (Machines) Ltd.*****(**supra**),** ***Tamil Nadu Handloom Weavers' Society*** **(**supra**),** *and* ***Tikka Brijinder Singh Bedi*** (supra).

11.12. From this conduct of the landlord, it is clear that the landlord was never willing to take over the possession of the suit property with the malafide intention to misappropriate the security deposit. During the course of the arguments, it was specifically put to learned senior counsel for the appellant to show any communication containing willingness of the landlord to take the possession of the suit property. However, learned senior counsel for the landlord could not show even a single letter conveying the willingness of the landlord to take over the possession.

11.13. The tenant, a government owned corporation under the Ministry of Road Transport and Highways Government of India had constructed their own building in Dwarka where they had

planned to shift after vacating the suit property. However, since the Dwarka property was not ready, the lease was initially extended up to 30th June, 2001 and thereafter, again by three months up to 30th September, 2001. The landlord was well aware that the tenant had constructed their own building in Dwarka where they had planned to shift after vacating the suit property and therefore, the landlord should have visited the suit property on 30th September, 2001 to take over the possession which he deliberately omitted with the dishonest intention of somehow delay the taking over of the possession to misappropriate the security deposit. No justification whatsoever has been given by the landlord why the landlord did not visit suit property on 30th September, 2001 to take over the possession. In that view of the matter, the landlord's repeated requests to the tenant to continue to occupy the suit property were aimed at misappropriating the security deposit.

11.14. On 6th November, 2001, the landlord inspected the suit property and noticed that all doors were damaged, locks were not working, keys were missing or removed or not working. The landlord also did not notice articles of the tenant lying there. All this constitutes an admission of the landlord that the suit property lying vacant and unutilized as on 6th November, 2001. The damages mentioned in para 10 of the counter-claim of the landlord are reproduced hereunder:-

> "*10. On inspecting the premises, the Defendant was shocked to witness the state of despair and mutilation of the tenanted premises in total violation of the binding terms and condition of the lease agreement. The*

Defendant observed inter alia:-
(i) The glasses were broken;
(ii) Doors were damaged and locks not working or keys missing, certain doors and windows were missing;
(iii) The kitchen shelves were broken;
(iv) The sink and sanitary fittings of the bathroom were either broken; or missing;
(v) Almost all the light fittings were broken or removed or not working;'
(vi) Wiring of the house was totally damaged; electric panels and covers were missing;
(vii) Walls including wall cladding on the exterior wall and floorings are damaged, motor pumps were damaged and broken etc.;
(viii) ***Rather almost the entire list of fittings and fixture as per Annexure B of the Lease Agreement seemed to have been either damaged or destroyed or removed.***
This position was not in one place, but in the entire house and on each floor. *When the Defendant had let out this house on rent to the Plaintiff it was in an immaculate condition being built by one of the leading architects and builders of the country.* ***The Defendant was assured by the Plaintiff at the time of agreement that the premises shall be used carefully and diligently for residential purpose and restored to its original condition before handing over of the peaceful vacant possession of the premises, which the Plaintiff has failed to fulfill.****"*

(Emphasis supplied)

11.15. The landlord did not reply/respond to any of the tenant's letter dated 24th September, 2001, 1st October, 2001 and 9th November, 2001 and, therefore, adverse inference is drawn against the landlord that the landlord was never ready and willing to take over the possession of the suit property and was insisting for

further renewal of the lease knowingly well that the tenant had constructed his own building and had shifted out of the suit property which is admitted by the landlord in his letter dated 17th November, 2001.

11.16. The landlord's contention that he was contemplating that the tenant would renew the lease does not appear to be true. The two extensions of the lease deed on 26th March, 2001 and 27th June, 2001 had taken place prior to the expiry of the period of lease meaning thereby that the tenant approached the landlord for extension of lease prior to expiry of lease to which the landlord had readily agreed. Since the tenant did not approach the landlord for further extension of lease beyond 30th September, 2001 and simultaneously started shifting the goods, there could not have been any doubt whatsoever that the lease would not be further extended and the landlord was supposed to take over the possession on 30th September, 2001. The landlord's letter dated 17th November, 2001 does not refer to any assurance of the tenant to renew the lease. The claim made by the landlord is, therefore, patently false.

11.17. From the conduct of the landlord in not visiting the suit property on 30th September, 2001 and not responding to the letters dated 24th September, 2001 and 1st October, 2001, it can safely be presumed that the landlord deliberately did not visit the suit property on 30th September, 2001 because he was interested to somehow delay the taking over of possession to misappropriate the security deposit.

11.18. An honest landlord would have visited the suit property on 30th September, 2001 to take over the possession. If the suit property had been vacant, the landlord would have taken over the possession. On the other hand, if some items were still not removed, the tenant may have still handed over the keys with liberty to remove the left over items to a later date.

11.19. The landlord claims that the tenant had not vacated the suit property on 30th September, 2001 because some articles were removed on 30th October, 2001 and wants to prove the copy of a gate pass procured by him. If the landlord would have visited the suit property on 30th September, 2001, the necessity of proving the gate passes would not have arisen. However, since the landlord did not visit the suit property on 30th September, 2001 for which he could not give any justification and the landlord was never ready and willing to accept the possession even thereafter, this Court does not find any merit in the landlord's contentions.

11.20. Even assuming for the sake of argument that two almirahs and few glasses were lying inside the suit property which were removed on 30th October, 2001, the tenant may have removed them if the landlord would have visited the suit property to take the keys. Since the landlord was never ready and willing to take over the possession, the arguments advanced by the landlord are just a ploy to mislead the Court and divert the attention from the main issue. It is not the case of the landlord that he visited the suit property to take the possession and at that time, some material was lying inside and therefore, the possession was

not given. In that view of the matter, accepting the landlord's argument would amount to rewarding him for his malafide and dishonest acts and omissions.

11.21. The landlord has filed C.M. 19620/2012 under Order 41 Rule 27 of the Code of Civil Procedure to prove the gate pass dated 30th October, 2001. According to the landlord, two almirahs and five glasses were shifted from the suit property to Dwarka on 30th October, 2001. The additional evidence sought to be led by the landlord is wholly irrelevant because admittedly the landlord was never ready and willing to take over the possession of the suit property from the tenant. It is also not disputed that the landlord not even once visited the suit property during the above period to take the possession. In that view of the matter, the additional evidence sought to be led by the landlord is wholly irrelevant. The additional evidence would have been relevant if the landlord would have visited the suit property to take the possession and the tenant would have denied to deliver the possession and sought more time to remove the goods.

11.22. If the landlord would have visited the suit property on 30th September, 2001 to take the possession of the suit property, the following situations could have emerged:

(i) If the tenant had vacated the suit property as claimed by it, the vacant and peaceful possession would have handed over to the landlord and there would not have been any controversy; or

(ii) If the tenant had not removed all its belongings:-

(a) The tenant may have chosen to remove the balance items there and then in the presence of the landlord to hand over the possession to the landlord. Two almirahs and few glasses could have easily been removed there and then; or

(b) The tenant may have chosen to hand over the keys of the suit property to the landlord with the permission of the landlord to remove the balance items within a reasonable time; or

(c) The tenant may have taken a decision to give up the claim in respect of the left over items and handed over the keys of the suit property to the landlord along with the left over items; or

(d) The tenant may have sought some more time to vacate whereupon the parties may have mutually fixed a fresh date. In such an event, the tenant would have remained liable to pay the rent for the extended period.

11.23. Since the landlord was never ready and willing to take over the possession and was only interested to delay the taking over of the possession with the dishonest intention to somehow misappropriate the security deposit, the irrelevant evidence sought to be led by the landlord is another ploy to mislead this Court. There is no merit whatsoever in the application for additional evidence, which is liable to be dismissed.

11.24. Since the landlord never visited the suit property to take

over the possession, the issue as to whether any items were still remaining inside the suit property is wholly irrelevant. This Court is of the considered opinion that permitting any irrelevant evidence to be adduced by the landlord would be rewarding the landlord for his dishonest conduct.

11.25. The landlord has made a false claim and attempted to misled this Court. The landlord's contention that the tenant did not vacate the suit property till 18th January, 2002 is self-contradictory and inconsistent with the stand taken in the counter-claim where the landlord has admitted that he inspected the suit property on 6th November, 2001 and noticed broken glasses, damaged doors, locks not working, keys missing, kitchen shelves broken, sink and sanitary fittings of the bathroom broken/missing, light fittings broken/not working, wiring totally damaged, electric panels and covers were missing, walls damaged, motor pumps damaged and broken. The landlord did not notice any articles/belongings of the tenant in the suit property on 06th November, 2001 meaning thereby that the suit property was totally vacant and unutilized at the time of inspection on 6th November, 2001. The nature of damages mentioned in para 10 of the counter claim shows that the property could not have been occupied/used with that kind of damage.

11.26. The dishonest intention of the landlord is clear from the fact that the landlord had been repeatedly pleading with the tenant to continue to stay in the suit property on the same rent and in this manner, the landlord succeeded in delaying the taking over of the

possession up to 18th January, 2002. Since the rent of Rs.2,03,000/- per month for the period 1st October, 2001 to 18th January, 2002 was not sufficient to adjust the entire security deposit of Rs.12,21,000/-, the landlord as late as on 4th February, 2002, enhanced the claim of mesne profits to Rs.4,07,000/- per month.

11.27. Considering all the facts and circumstances and applying the test of preponderance of probabilities, the probabilities lean strongly in favour of the tenant almost 100%.

11.28. With respect to the landlord's claim of having spent Rs.5,04,178 for restoration of the suit property, the landlord did not examine the contractor to prove the expenditure incurred on the repairs. The landlord proved the six bills as Ex.D-13 (collectively) but neither produced nor proved the payment against the said bills. The landlord also chose not to produce the relevant account books to show the payment of any amount to the contractors. In that view of the matter, there is no infirmity in the rejection of the landlord's claim by the Trial Court.

11.29. This Court concurs with the decision of the Trial Court though the Trial Court has not given comprehensive reasons to support its decision. The decision of the learned Trial Court is upheld for the reasons given hereinabove.

11.30. The landlord has relied upon ***Sudhir Jaggi* v. *Sunil Akash Sinha Choudhury***, *2004* (7) SCC 515 and ***Gopal Krishnaji Ketkar* v. *Mohamed Haji Latif***, AIR 1968 SC 1413, ***ONGC* v. *Saw Pipes***, 2003 (5) SCC 705 and ***SAIL* v. *Gupta Brothers*** 2009

(10) SCC 63. ***Sudhir Jaggi*** (supra) relates to a summary suit under Section 6 of the Specific Relief Act filed by the purchaser to recover the possession of the flats from the developer and has no application to the present case. ***Gopal Krishnaji Ketkar*** (supra) deals with the principles relating to drawing of adverse inference against the person who does not produce the documents in his possession. This judgment also does not help the landlord who has made a false claim before this Court and no case for drawing adverse inference is made out for the detailed reasons discussed above. ***ONGC vs. Saw Pipes Limited*** (supra) and ***SAIL vs. Gupta Brothers*** (supra) relied upon by the landlord deal with the right of a party under a contract to recover the pre-estimated liquidated damages under the contract without requiring the other party to prove the loss suffered. These judgments also do not help the landlord because the landlord has failed to take the possession of the suit property upon being offered by the tenant on determination of the lease and, therefore, the landlord has no right to recover the liquidated damages from the tenant.

Consequences of setting up a false claim

12. The entire set up by the landlord is *mala fide* with the dishonest intention to somehow misappropriate the security deposit of the tenant. In ***Sky Land International Pvt. Ltd. v. Kavita P. Lalwani***, 191 (2012) DLT 594, this Court has considered the relevant judgments of the Supreme Court with respect to the action to be taken in respect of false claims. Relevant portion of the said judgment is reproduced hereunder: -

"False Claims and Defences

20.1. **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria,** (supra), the Supreme Court held that false claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. The Supreme Court held as under:-

> **"False claims and false defences**
>
> 84. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent."

20.2. In **Dalip Singh v. State of U.P., (2010) 2 SCC 114**, the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

> "1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic

changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. **In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."**

(Emphasis supplied)

20.3. In **Satyender Singh v. Gulab Singh, MANU/DE/1047/2012**, the Division Bench of this Court following **Dalip Singh v. State of U.P.** (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause. The observations of this Court are as under:-

"2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. **In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a**

march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left."

(Emphasis supplied)

23.**Imposition of Costs**

23.1. In **Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249**, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-

"45. ……..We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases."

"52. The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials."

"C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way

in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits."

"G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice."

"54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned

> order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation."
>
> *(Emphasis supplied)*

23.2. In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria** (supra) the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences as under:-

> "85. This Court in a recent judgment in Ramrameshwari Devi and Ors. (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. **In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.**"

(Emphasis supplied)

23.3. In **Padmawati v. Harijan Sewak Sangh, 154 (2008) DLT 411**, this Court imposed cost of Rs. 15.1 lakhs and noted as under:

> "6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person."
>
> "7. … The petitioners are, therefore, liable to pay costs which is equivalent to the average market rent of 292 months to the Respondent No. 1 and which comes to Rs.14,60,000 apart from litigation expenses and Counsel's fee throughout which is assessed at Rs. 50,000/-. The petition is hereby dismissed with costs of Rs.15,10,000/- to be recovered from the petitioners jointly and severally. If any amount has been paid towards user charges, the same shall be adjustable."
>
> **"9. Before parting with this case, I consider it necessary to pen down that one of the reasons for**

over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."

(Emphasis supplied)

23.4. In **Punjab National Bank v. Virender Prakash, MANU/DE/0620/2012,** this Court ruled that penal costs should be imposed on dishonest tenants who illegally continue to occupy the tenanted premises by raising a frivolous defence. This Court imposed costs of Rs.2,00,000/- on the bank which was upheld by

the Supreme Court. The relevant findings of this Court are reproduced hereunder:-

> "1. **…Certain tenants, in this country, consider it an inherent right not to vacate the premises even after either expiry of tenancy period by efflux of time or after their tenancy is terminated by means of a notice under Section 106 of Transfer of Property Act, 1882. All such tenants, including the present appellant-bank, feel that they ought to vacate the tenanted premises only when the Courts pass a decree for possession against them. Considering the facts of the case, it is high time that a strict message is sent to those tenants who illegally continue to occupy the tenanted premises by raising frivolous defences only and only to continue in possession of the tenanted premises. Such incorrigible tenants should be appropriately burdened with penal costs …."**
>
> "7. Now, the issue is with respect to costs. I have already given a preface at the very beginning of this judgment. This preface, is a preface which was necessary inasmuch as **there is a flood of litigation unnecessarily burdening the Courts only because obdurate tenants refuse to vacate the tenanted premises even after their tenancy period expires by efflux of time or the monthly tenancy has been brought to an end by service of a notice under Section 106 of Transfer of Property Act, 1882**. In the present case, the tenant is not a poor or a middle class person, but is a bank with huge resources and hence can contest litigation to the hilt. It is therefore necessary that I strictly apply the ratio of the Supreme Court judgment in the case of Ram Rameshwari Devi and Others (supra)…."
>
> **Dishonest and unnecessary litigations are a huge strain on the judicial system which is asked to spend unnecessary time for such litigation.**

8. **In view of the gross conduct of the appellant in the present case, I dismiss the appeal with costs of Rs.2 lacs.** Since the respondents are not represented, costs be deposited in the account of Registrar General of this Court maintained in UCO Bank, Delhi High Court Branch for being utilized towards juvenile justice, surely a just cause. Costs be deposited within a period of four weeks from today. Obviously, the costs may be peanuts for a huge organization such as the appellant-bank but I hope the spirit of the costs will be understood by the appellant-bank as also all other tenants who refuse to vacate the premises although they have overstayed their welcome in the tenanted premises."

(Emphasis supplied)

The Supreme Court has dismissed the SLP against the aforesaid judgment. The Supreme Court passed the following order:-

"On hearing Mr. Dhruv Mehta, Senior Advocate appearing for the petitioner, and on going through the judgment of the High Court, we find ourselves in complete agreement with the view taken by the High Court. We are also satisfied that that High Court was quite justified in imposing the heavy cost against the petitioner bank.

The special leave petition is, accordingly dismissed."

13. In ***Sky Land International Pvt. Ltd.*** (supra), this Court after discussing the relevant judgments, summarized the principles of law which are reproduced hereunder:

*"**26. <u>Summary of the principles of law</u>***

From the analysis of the above decisions and the provisions with which we are concerned, the following

principles emerge:-

26.1 ...

...

26.19 ...

26.20 Dishonest and unnecessary litigations are a huge strain on the judicial system. The Courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.

26.21 Truth should be the guiding star in the entire judicial process and it must be the endeavour of the court to ascertain the truth in every matter. Truth is the foundation of justice. Section 165 casts a duty on the Judge to discover truth to do complete justice and empowers him to summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case. The Judge has to play an active role to discover the truth. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and, to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. The Court can also invoke Section 30 of the Code of Civil Procedure to ascertain the truth.

26.22 Unless the Courts ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that the Courts' scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for

cases. It becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation, ultimately they must suffer the costs. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that the dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.

26.23 Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. The cost should be equal to the benefits derived by the litigants, and the harm and deprivation suffered by the rightful person so as to check the frivolous litigations and prevent the people from reaping a rich harvest of illegal acts through Court. The costs imposed by the Courts must be the real costs equal to the deprivation suffered by the rightful person and also considering how long they have compelled the other side to contest and defend the litigation in various courts. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The parties raise fanciful claims and contests because the Courts are reluctant to order prosecution."

14. ***<u>Conclusion</u>***

14.1. On careful consideration of the rival contentions of the parties and applying the well-settled principles of law, this Court is of the view that the tenant's lease determined on 30th September, 2001 when the tenant offered the possession to the landlord, who deliberately chose not to take the possession with the dishonest

intention of misappropriating the tenant's security deposit and, therefore, the possession is deemed to have been delivered to the landlord who is not entitled to rent or mesne profits from the tenant.

14.2. There is no merit in this appeal which is gross abuse and misuse of the process of law. The appeal as well as CM 19620/2012 are, therefore, dismissed with costs of Rs.50,000/-. CM 1320/2013 is disposed of.

14.3. The landlord has deposited 75% of the decretal amount and has given bank guarantee with respect to balance 25% of the decretal amount in terms of the order dated 10th January, 2011. Vide order dated 23rd November, 2012, the amount deposited by the landlord along with interest thereon has been released to the tenant. Since this appeal has been dismissed, the bank guarantee given by the appellant be encashed and the balance amount be released to the tenant.

14.4. The tenant has made a false claim which amounts to an offence under Section 209 of Indian Penal Code and therefore, show cause notice is hereby issued to him as to why the complaint be not made against him under Section 340 of the Code of Criminal Procedure for making a false claim under Section 209 of the Indian Penal Code.

14.5. List for considering the response of the landlord on 19th May, 2015.

14.6. Mr. Sidharth Luthra, Senior Advocate is appointed as amicus curiae to assist the Court.

14.7. Copy of this judgment be given dasti under the signature of the Court Master to the counsel for the parties as well as to the learned amicus curiae.

15. ***Suggestions of this Court to curb the frivolous litigation arising out of the refusal of the landlord to take the possession with the dishonest intention to misappropriate the security deposit.***

15.1. This Court is of the view that if a dishonest landlord deliberately delays the taking over of the possession, the tenant should vacate the tenanted premises; take photographs of the vacant premises; seal the property in the presence of a Notary Public and thereafter, deposit the keys in the Court in a suit for refund of security deposit to rule out any possibility of the landlord setting up a false defence that the property was not vacated at the time of the surrender of the lease.

15.2. The landlord – tenant litigation is increasing day by day. Ordinarily, the Courts come across dishonest tenants who refuse to vacate the properties on determination of lease and drive the landlord to multifarious litigation and raise frivolous pleas to delay the handing over of the possession to the landlord. However, in cases where the tenants want to vacate the property, the landlords turn dishonest and they deliberately delay the taking over of possession with the dishonest intention of misappropriating the security deposit refundable at the time of handing over of the possession. This Court is of the view that there is need to evolve strong measures to discourage the dishonest tenants in the first

category of cases as well as dishonest landlords as in the second category of cases.

15.3. Most tenancies do not end without a dispute or atleast without recourse to legal action by either party. The gamut of problems that arise at the end of the tenancy are as under:

15.3.1. The landlord deliberately delays the taking over of the possession with the dishonest intention of misappropriating the security deposit.

15.3.2. The landlord refuses to return the deposit without giving any reason.

15.3.3. The landlord agrees to return the deposit but delays doing so.

15.3.4. The landlord dishonestly adjusts the security deposit to cover the damage to the property for which there is no evidence.

15.3.5. The landlord goes bankrupt/insolvent or sells the subject property without transferring the security deposit to the purchaser.

15.4. The security deposit is the tenant's money and the landlord has no right to use or appropriate the said amount during the period of the lease. The security deposit has to be made available to the landlord at the time of determination of lease to adjust un-paid rent, un-paid electricity, water, maintenance and other dues as well as damage done to the property by the tenant and it is the duty of the law to protect the security deposit of the tenant.

15.5. This Court is of the view that the refundable security deposit should be deposited with a Bank/Financial institution under an

Escrow agreement between the landlord, tenant and the Bank/Financial institution. Upon the refusal of the landlord to take the possession offered by the tenant, the tenant can deposit the keys in respect of the tenanted premises along with upto date paid bills of water, electricity, maintenance and other dues with the Bank/ Financial institution to claim the refund of the security deposit. In the event of a dispute with respect to the damage to the property by the tenant, the Bank/Financial institution can carry out a joint inspection in the presence of both the parties and refer the parties to the Mediation Centre attached to the Courts for dispute resolution. The Bank/Financial institution shall thereafter release the outstanding dues to the landlord and balance security deposit to the tenant. This procedure would save the parties from the frivolous litigation relating to the dishonest misappropriation of security deposit by the landlords.

15.6. Many countries have made statutory provisions to protect the security amount of the tenant. In England, a voluntary Tenancy Deposit Scheme (TDS) was launched in 2000. In 2007, Section 212(2) of Housing Act, 2004 was incorporated to safeguard the tenancy deposits paid by the tenant and to facilitate adjudication of the disputes in connection with such deposits. The landlord is required to keep the tenant's security deposit with a government assured scheme and provide the tenant with the prescribed information. The failure to comply with the above requirement is punishable with fine upto three times of the deposit and the landlord loses the right to obtain the Court order to recover

possession of the property until the deposit is protected and the prescribed information is served. Upon tenant's surrender of lease, the landlord is required to notify the proposed deductions within ten calendar days and return the undisputed amount to the tenant. If the landlord and tenant cannot agree on deductions and attempts to negotiate fail, the financial institution offers a free and impartial alternative dispute resolution service to resolve the disputes. The relevant provisions of the Housing Act, 2004 are available on the website *http://www.legislation.gov.uk/ukpga/2004/34/pdfs/ukpga_20040034_en.pdf* and the scheme is available on https://www.mydeposits.co.uk/landlords/the-law.

15.7. The consultation paper published by the office of the Deputy Prime Minister, UK before the amendment of the Housing Act, 2004 discusses the legal position of the Tenancy Deposit Schemes in the other countries. The relevant portion of the consultation paper published is reproduced hereunder:

> "*CHAPTER 3*
> *Improving deposit management*
> *Mandatory deposit protection schemes in other countries*
> *1. Statutory schemes to safeguard tenants' deposits and landlords' property are common in many parts of the world. It is known that there is provision in place – ranging from basic legislation to mandatory deposit protection schemes – in Germany, France, Belgium and parts of Spain, and in Australia, New Zealand and Canada. Information about schemes in other countries, particularly in mainland Europe, is welcomed from consultees.*

2. In Germany deposits cannot equal more than three months' rent, must be held in a special account and generally returned with interest within a time limit of one year after the end of the tenancy. There is no independent decision on how the deposit should be allocated, and no specialised arbitration process for disputes. It is reportedly not unusual for tenants to experience difficulties when trying to get back their deposits, and legal cases concerning the return of deposits are common.

3. In France similar regulations apply. Deposits are limited to two or three months' rent and must be returned within two months of the tenant handing the keys back. No interest is payable to the tenant unless the time limit for the deposit return is exceeded. The landlord must provide evidence for any deductions they wish to make and a condition report on the property both at entry and exit of the tenant is also a legal requirement. However, if the landlord does not comply with the tenant's written request to provide such proof or return the deposit, the tenant must take the case to court.

4. In Belgium, the approach is rather different, with end-of-tenancy costs being guaranteed by the country's banks. Landlords are not allowed to hold deposits; rather, tenants deposit three month's rent in a blocked bank account which is in the tenant's name but controlled by both landlord and tenant. The money can only be released when both sign an agreement. The interest belongs to the tenant and disputes are taken to a civil court. A second Belgian option requires no deposit at all but is a form of insurance set up by the tenant, who pays a bank a handling charge and yearly fee to guarantee them against any damage or rent arrears.

5. In Australia and Canada, the state or provincial Government is responsible for housing legislation. These countries provide three models for a

mandatory scheme, described in detail in Annex (i) to require the landlord to return the deposit with interest within a set time limit;

(ii) to require the landlord to hold the deposit in a separate trust account and return the deposit with interest within a set time limit;

(iii) to require the deposit to be held and disbursed by an independent statutory body.

6. In New Zealand and the majority of the Australian states and Canadian provinces, disputes are referred to tribunals specialising in residential tenancy issues (rents and repairs as well as deposits), rather than general courts. Government departments or their agencies administer these tribunals."

15.8. In Alaska, Connecticut, Delaware, Columbia, Florida, Georgia, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Pennsylvania and Washington of United States of America, there are statutory provisions for keeping the security deposit of the tenant in an escrow/trust account. In Oklahoma, misappropriation of security deposit is an offence punishable with sentence upto six months and fine upto an amount not exceeding twice the amount misappropriate by the landlord. The relevant provisions of the Statutes of various states of U.S.A. are available on the following websites:

S. No	Name of the Countries	Name of the Statute	Section/Article Number	Hyper-link
1.	Oklahoma	Non Residential/ Residential Landlord	Section 115	https://www.ok.gov/OREC/documents/Landlord%20and%20Tenant%20Act%20Update.pdf

		and Tenants Acts		
2.	ALASKA	Alaska Uniform Residential Landlord & Tenant Act	Section 34.03.070	http://www.law.alaska.gov/department/civil/consumer/3403010.html
3.	Connecticut	Staute-Title 47a-Landlord and Tenant	Section 47a-21	http://www.cga.ct.gov/2011/pub/chap831.htm
4.	Delaware	Title 25-Property Chapter 55 – Residential Landlord-Tenant Code	Section 5501-(4)(b)	http://delcode.delaware.gov/title25/c055/index.shtml
5.	Columbia	Security Deposit Act, 1976	Section 308	http://dcregs.dc.gov/Gateway/ChapterHome.aspx?ChapterNumber=14-3
6.	Florida	Civil Practice and Procedure	Section 83.49(1)(a)	http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0083/Sections/0083.49.html
7.	Georgia	LandLord & Tenant	Title 44-7-31	http://policy.mofcom.gov.cn/GlobalLaw/english/flaw!fetch.action?id=f916d5da-6cea-4e64-bd96-5b2843bdf830&pager.pageNo=1#georgia-title-44-chapter-7-article-2
8.	Maine	Title 14-Security Deposits on Residential Rental units	Section 6038	http://legislature.maine.gov/statutes/14/title14ch710-A.pdf
9.	Massachusetts	Title I – Title to Real	Section 15 B (e)	https://malegislature.gov/Laws/GeneralLaws/PartII/Ti

		Property		tleI/Chapter186/Section15 B
10.	New Hampshire	Title LV- Proceedings in special cases	Section 540-A:6 II	http://www.gencourt.state.nh.us/rsa/html/LV/540-A/540-A-mrg.htm
11.	New Jersey	The Rent Security Deposit Act	Section 46:8-19	http://www.state.nj.us/dca/divisions/codes/publications/pdf_lti/sdepsit_law.pdf
12.	Pennsylvania	Pennsylvania Landlord and Tenant Act, 1951	Section 250.511 b(a)	https://www.thelpa.com/lpa/landlord-tenant-law/pennsylvania-security-deposit-law.html
13.	Washington	Title 59, Chapter 59.18	Section 59.18.270	http://apps.leg.wa.gov/rcw/default.aspx?cite=59.18.270

15.9. This Court is of the view that there is need for statutory protection of security deposits of the tenants. Copy of this judgment along with the copies of the extracts from the relevant provisions mentioned above be sent to the Central Government for considering the suggestions of this Court. Copy of this judgment be given *dasti* under signature of Court Master to Shri Sanjay Jain, learned ASG, who shall place the same for consideration before the Government.

15.10. This Court is further of the view that till the Central Government considers the suggestions of this Court, the banks can introduce voluntary Security Protection Scheme in which the parties (landlord and tenant) can keep the security deposit amount

by executing an escrow agreement with the bank.

15.11. Copy of this judgment be given dasti under signature of Court Master to the RBI through their nominated counsel as well as to Mr. Sanjiv Kakra, nominated counsel for the State Bank of India, who shall take up this matter with SBI and shall also send copy of this judgement to the Indian Bank Association.

15.12. Copy of this judgment be also given dasti under signature of the Court Master to the Secretary, Delhi High Court Bar Association who shall send the response of the Bar to the Government.

J.R. MIDHA, J.

MAY 14, 2015