



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

Reserved on: 12th February, 2024

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Pronounced on: 28th June, 2024

+ **CS(OS) 600/2019 & I.As.16252/2019, 16253/2019, 3194/2020, 3309/2020, 9594/2020, 9610/2020, 2018/2021, 2753/2021, 2765/2021, 14527/2022, 11061/2023, 25995/2023**

HEM MANOHAR

R/o 16, Johnson Close, Winthrop,
Perth, 6150 WA Australia,
Through Special Power of Attorney Holder,
Mr. Uma Shankar Seth,
R/o A-2/1 Vasant Vihar, New Delhi-110057 Plaintiff No. 1

VIVITA TAYAL

R/o 51, Hersperia Avenue, City Bench,
Perth, WA 605 Australia,
Through Special Power of Attorney Holder,
Mr. Uma Shankar Seth,
R/o A-2/1 Vasant Vihar, New Delhi-110057 Plaintiff No. 2
Through: Mr. Arjun Singh Bawa & Mr. Sahil
Gupta, Advocates.

versus

1. **RACHNA GUPTA**

W/o Mr. Rajinder Gupta,
Partner of M/s Sangeeta Leasings,
R-235, Greater Kailash-1,
New Delhi-110048 Defendant No. 1

2. **SANJAY GUPTA**

Partner of M/s Sangeeta Leasings,
R-235, Greater Kailash-1,
New Delhi-110048 Defendant No. 2



3. **M/S SANGEETA LEASINGS**
Through its Partner, Mrs. Rachna Gupta,
Having its registered Office at:
R-235, Greater Kailash-1,
New Delhi-110048 Defendant No. 3
4. **SUDHIR KAMATH**
Occupant of Ground Floor,
E-12/4, Vasant Vihar, New Delhi-110057 Defendant No. 4
5. **MALVIKA PILLAI**
Occupant of Ground Floor,
E-12/4, Vasant Vihar, New Delhi-110057 Defendant No. 5
6. **NARENDER BAJAJ**
Occupant of Ground Floor,
E-12/4, Vasant Vihar, New Delhi-110057 Defendant No. 6
7. **ALOK BRARA**
Occupant of Ground Floor,
E-12/4, Vasant Vihar, New Delhi-110057 Defendant No. 7

Through: Mr. Varun Shankar & Mr. Aryan Panwar, Advocates for D-1 to 3.
Ms. Monica Lakhanpal & Mr. Utkarsh Tiwari, Advocates for D-4 & 5.
Mr. M.K. Shah, Advocate for D-6 & proposed D-8.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

I.A. 7952/2023 (u/Order XII Rule 6 r/w Section 151 of CPC, 1908)



1. By way of present application under *Order XII Rule 6* CPC, the applicants/plaintiffs seeks judgment for possession based on admissions.
2. The plaintiffs have filed *Suit for Eviction, Rendition of Accounts, Damages for Loss of Rent and Injunction*, against the defendants.
3. It is asserted in the Application that the defendant Nos. 1 to 3 have unequivocally admitted that Late Shri Manohar was the owner of the Suit Property No. E-12/4, Vasant Vihar, New Delhi-110057, admeasuring 829 sq. yards. The suit property stands mutated in favour of the plaintiffs, who are the wife and daughter of Late Shri Manohar, *vide* Mutation Letter dated 06.08.2019 and Corrigendum dated 19.11.2019 issued by the Delhi Development Authority (in short 'DDA'). The defendants are now estopped from denying the title of the plaintiffs as the owner of the suit property.
4. It is further submitted in the Application that the plaintiffs had filed the *Application No. I.A. 16253/2019 under Order XXXIX Rule 10* of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) seeking direction to the defendants to deposit the arrears of rent. The said application has been allowed *vide* Order dated 17.02.2020, in compliance of which the defendant Nos. 1 to 3 have deposited a sum of Rs. 1,00,000/- in the Court. Hence, the act of deposit of rent, amounts to admission on the part of the defendant Nos. 1 to 3 that they have not paid the rentals to the plaintiffs under the Lease Deed since 1999.
5. Admittedly, the defendant Nos. 1 to 3 have also not paid any rent to the plaintiffs under the Lease Deed dated 01.10.2013. Late Shri Manohar, predecessor-in-interest of the plaintiffs, died on 06.04.2017. The General Power of Attorney dated 17.01.1979 executed by Late Shri Manohar in favour of Shri Rajinder Kumar Gupta, husband of the defendant No.



1/Rachna Gupta, stands terminated in terms of Section 201 of the Contract Act, 1872.

6. Moreover, from the averments made by the defendant Nos. 1 to 3 in their Written Statement, it is established expressly and unambiguously that the defendant No. 3 is a tenant in the suit property; Late Shri Manohar had through his General Power of Attorney Holder, Shri Rajinder Kumar Gupta, executed the following registered Lease Deeds: -

- (i) Lease Deed dated 11.09.1987 till 10.09.1992,
- (ii) Lease Deed dated 22.04.1999 till 21.04.2009,
- (iii) Lease Deed dated 01.10.2013 till 30.09.2023.

7. It is submitted that *Section 108 of the Transfer of Property Act, 1882* provides that the lessee has a right to continue in the property without interruption from the lesser on the condition that the lessee pays the rent reserved under the Lease Deed and performs all the obligations/covenant as mentioned therein. The defendant No. 3/M/s Sangeeta Leasings has enjoyed the possession of the suit property but has failed to discharge the contractual obligations under the Lease Deed dated 01.10.2013. Since the defendant No. 3/M/s Sangeeta Leasings/tenant has committed the breach of terms of Lease Deed, it has forfeited the right to continue in peaceful possession of the suit property and is liable to be evicted.

8. Hence, a prayer is made that Judgment under Order XII Rule 6 read with Section 151 of CPC, 1908 be made to declare the Lease deed dated 01.10.2013 as terminated and to evict the defendant Nos. 1 to 3 from the suit property, aside from directing them to pay rentals/arrears of rents. Further, prayer is made that Rs. 1,00,000/- which has been deposited in this Court in compliance of the Order dated 17.02.2020 by the defendant Nos. 1 to 3, be



also released in favour of the plaintiffs.

9. Learned Counsel for the plaintiffs has placed reliance on the case of Sunil Kapoor vs. Himmat Singh and Ors. in CM(M) No. 1215/2007 decided on 29.01.2010 to assert that mere Agreement to Sell, does not create right in the suit property, except for right to enforce the same. Hence, a plea of part-performance is not tenable. It was further stated that when a Suit for ejectment is filed, Court should not restrain its hands merely because the Suit for Specific Performance is pending.

10. It is asserted by the plaintiffs that the defendants are unauthorised tenants in the suit property. Reliance was also placed on the case of Anil Suri and Ors. vs. Vikrant Khanna and Ors. in CM (M) No. 1341/2008 decided on 16.09.2009 to assert that once the rent is not being paid by the tenants, the said default entitles the 'petitioners' to terminate the Lease Deed. Further, the continued occupation of the tenants after the Legal Notice of termination, would be unauthorised and illegal.

11. **The present application has been contested by the defendant Nos. 1 to 3 who in their detailed Reply** have denied that their Written Statement contains any admission. It is asserted that the averments made in the Written Statement do not satisfy the essential requirements of an admissions which have to be clear, unambiguous, unconditional and unequivocal, as has been held by the Apex Court in the case of Himani Alloys vs. TATA Steels, Civil Appeal No. 5077/2011.

12. It is asserted that at no point of time, the defendants admitted that their possession is illegal or that they are liable to pay the rent collected by them from the sub-tenants, to the plaintiffs.

13. Reliance has been placed on the decision in SM Asif vs. Virendra



Kumar Bajaj, (2015) 4 SCC (Civ) 589, wherein it was observed that the power under Order XII Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 of CPC, 1908. In the said Suit for Eviction filed by the landlord, the appellant-tenant had admitted the relationship of tenancy and the period of Lease Agreement, but had resisted the claim of the landlord by setting up a defence plea of Agreement to Sell and that he had already paid an advance of Rs. 82.50 lakhs, though denied by the respondent-landlord. It was held that when such issues arise between the parties, they ought to be decided; mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the Suit under Order XII Rule 6 of CPC, 1908.

14. It is claimed that there are issues raised by the defendants which go to the core of the dispute which are required to be determined.

15. It is further submitted that admittedly an irrevocable General Power of Attorney dated 17.01.1979 was executed in regard to the suit property by Late Shri Manohar which empowered Shri Rajinder Kumar Gupta to lease out the suit property as and when he wished and deemed appropriate. Late Shri Manohar relocated himself in Australia and gave up Indian citizenship sometime in mid 1980s. Late Shri Manohar intended to conclude his affairs with regard to the suit property as it was inconvenient for him to manage the same after permanently relocating out of India. Therefore, Late Shri Manohar transferred all the legal and fiscal responsibilities with regard to the suit property to Shri Rajinder Kumar Gupta by executing the irrevocable General Power of Attorney dated 17.01.1979. *It was the intention of Late*



Shri Manohar to transfer the title of the suit property in favour of Shri Rajinder Kumar Gupta or to his wife, Smt. Rachna Gupta/defendant No. 1.

16. It is further claimed that at the time of execution of irrevocable General Power of Attorney dated 17.01.1979, the suit property had been illegally occupied by one M/s Gandhi Estate Agency. Shri Rajinder Kumar Gupta at his own expenses and personal pain, got the suit property vacated. Shri Rajinder Kumar Gupta also bore the expenses for the renovation and construction of the then dilapidated suit property. Shri Rajinder Kumar Gupta has also been paying the House Tax for the past 40 years.

17. It is claimed that Late Shri Manohar in the presence of his wife, Smt. Hema Manohar/plaintiff No. 1, had entered into an Oral Agreement to Sell dated 08.01.1984, wherein he agreed to sell the suit property to Shri Rajinder Kumar Gupta for a sale consideration of Rs. 20,00,000/- and Rs. 4,00,000/- was paid by Shri Rajinder Kumar Gupta as part of the sale consideration with a clear understanding that the balance would be paid as and when the Sale Deed is executed in his favour. Late Shri Manohar till his demise in the year 2017, never claimed any rental amount from Shri Rajinder Kumar Gupta or from his family for almost 40 years. It is only after the demise of Late Shri Manohar that his family members have started harassing the defendants for possession of the suit property.

18. The defendants have asserted that a valid, legal and binding Oral Agreement to Sell was entered into by Late Shri Manohar with Shri Rajinder Kumar Gupta in respect of the suit property. It was further asserted that in order to cement the understanding between the parties, Late Shri Manohar gave the beneficial rights in the suit property *vide* irrevocable General Power of Attorney dated 17.01.1979 to Shri Rajinder Kumar Gupta.



19. The defendants have further referred to Letter dated 20.06.1989 written by Late Shri Manohar to Shri Rajinder Kumar Gupta indicating that *“I would like to transfer the ownership of the home to you or to any member of your family. Please organise the paper work and send it to me for my signature”*.

20. Reliance has been placed on the decision in the case of Seth Loon Karan Sethia vs. Ivan V. John, 1969 AIR 73 wherein the Supreme Court held that *Section 202 of the Contract Act* provides that where an agency is created for valuable consideration and authority is given to effectuate a security or to secure interest of the agent, the authority cannot be revoked. The defendants have also placed reliance on the case of Shri Ram Murty Singh Sisodia vs. Pratap Singh Sisodia, RFA No. 146/2004.

21. The defendants have further asserted that their possession in the suit property is protected under Section 53-A of the Transfer of Property Act as they had got the possession rightfully and the same cannot be disturbed in the event a seller refuses to perform his part of the Contract despite obtaining part consideration from the purchaser. Reliance has been placed on the decision in Mukesh Gupta and Others vs. DDA, 2020 SCC OnLine Del 120.

22. Lastly, it is stated that an application under Order I Rule 10 of CPC, 1908 for impleadment of Shri Rajendra is pending adjudication. Reliance is placed on the case of Mumbai International Airport Private Limited vs. Regency Convention Centre and Hotels Private Limited and Others (2010) 7 SCC 417, to assert that Shri Rajendra is a proper and necessary part to the suit. *(This application has is still pending and Sh. Rajender has further filed a suit for Specific Performance.)*



23. It is stated that the Order dated 17.02.2020 passed under Order XXXIX Rule 10, CPC, 1908, directing the Defendants to deposit the arrears of rents for the period from 2016-2019 is an interim Order to simply secure the rights of the Plaintiff in the event the present Suit is decided in their favour. The said interim Order is not a comment on the merits of the case and has also not become absolute. Reliance has been placed on Shiv Narayan Bhardwaj and Another vs. Raman Educational Welfare Society and Others, (2017) SCC OnLine Del 7146, wherein it has been observed that the Order XXXIX Rule 10 of CPC, 1908 is an interlocutory order which may operate as *res judicata* in the same Court at the different stages of the proceedings, but the same principle may not apply to the higher Court.

24. It is thus, submitted on behalf of the defendants that there are no admissions made by the defendants; rather the admitted facts show that they are in possession of the suit property in part performance of an Oral Agreement to Sell and they cannot be evicted.

25. **Submissions heard and the record perused.**

26. It is not in dispute that the suit property was originally purchased by Late Shri Manohar and his wife, Smt. Hem Manohar/plaintiff No. 1 *vide* Perpetual Sub-Lease Deed dated 08.08.1969, where Shri Manohar and plaintiff No. 1/Hem Manohar were the owners to the extent of 50% share each. There is no denial of ownership of the plaintiffs in the suit property.

27. Around some time in September, 1978 when Late Shri Manohar contemplated immigration to Australia pursuant to his retirement from service, he decided to authorize Shri Rajinder Kumar Gupta, who is his co-brother (*husband of the sister of Smt. Hem Manohar*) for getting the tenants and sub-tenants evicted from the suit property. Consequently, Late Shri



Manohar executed an *irrevocable General Power of Attorney dated 17.01.1979 in favour of Shri Rajinder Kumar Gupta* and authorized him to take care of the suit property. The relevant clauses of the GPA are:

- (i) *manage and to deal with the suit property,*
- (ii) *to initiate eviction proceedings against defaulting tenants and other legal proceedings as required,*
- (iii) *to grant leases of the property,*
- (iv) *to appear and to act in all courts and authorities with regard to the suit property.*
- (v) *to collected rent from the tenants.*

28. **Further admissions which emerge from the Written Statement** of the defendants are that on 11.09.1987, Shri Rajinder Kumar Gupta as General Power of Attorney (GPA) holder of late Sh. Manohar, let out the suit property to his family concern i.e., the defendant No. 3/M/s Sangeeta Leasings, a partnership Firm in which the defendant No. 1/Rachna Gupta, his wife and the defendant No. 2/Sanjay Gupta, his son, were the partners. The Lease Deed dated 11.09.1987 was for a period of five years, subject to periodic renewal. The defendants were inducted as tenants on 11.09.1987 i.e. after about nine years of the execution of the GPA in favour of Sh. Rajinder Gupta, for and on behalf of Late Sh. Hem Manohar. The defendant No.1 &2 may have been the wife and son of Sh. Rajinder Gupta, but the tenant was Defendant No.3 M/s Sangeeta Leasings, a partnership Firm, (*in which defendant No.1 &2 were the partners*) having its independent legal entity.

29. The relevant terms of the Lease Deed dated 11.09.1987 which is an



admitted document, are as under:

“This Lease Deed executed on this 11th September 1997 between Shri Manohar through Attorney Shri Rajendra Kumar Gupta of 20, Bara Khamba Road, New Delhi (hereinafter called the landlord) (which expression shall, where the context so admits include his heirs, executors, administrators and assigns of the one part) and Mis Sangeeta Leasings, a partnership firm having its office at R-235, Greater Kailash, part_I, New Delhi-110048 through its partner Shri Sanjay Gupta (hereinafter called the Tenant) (which expression shall where the contexts so admits, include his successors and assignees of the second part).

WHEREAS the landlord is the owner of property No E-12/4, Vasant Vihar, New Delhi.

AND WHEREAS the landlord owner is Non Resident Indian permanently settled in Australia.

AND WHEREAS the said property is wholly and heavily encroached by and tenanted to various persons. The Tenant M/s. Gandhi Estate Agency has not paid any rent since the inception of the tenancy and a suit for his eviction is pending in the court. Despite efforts the encroachers and unauthorised occupants have not agreed to vacate the property and there is no income, as at present, from the said property. The property has not been properly repaired, maintained or white washed for quite some time and is nearing dilapidation.

AND WHEREAS it is impossible for the Landlord/owner or his attorney to look after the property or to get the same vacated.

AND WHEREAS the Tenant has agreed to, take immediate steps for securing vacant possession of the said property to him and, to repair and maintain the property at his cost.

AND WHEREAS the Tenant is in the business of leasings including the business of acquiring on rent or otherwise the immovable properties to maintain them and to act as house agents.

NOW THIS DEED WITNESSETH AS FOLLOWS:



1. That in consideration of the above said and of the rent hereinafter mentioned and of the tenant's covenants hereinafter contained the landlord hereby grants a lease unto the said tenants of all that dwelling house including the appurtenances, lawns out houses etc of premises No E-12/4, Vasant Vihar, New Delhi 110057 to hold the same unto the Tenant for a term of 5 years.
2. The tenant shall pay the monthly rent of Rs.3000/- (Rupees three thousand only) payable by the 15th day of each succeeding month.
3. The purpose of the lease is the business of the tenant. The Landlord hereby grants permission to the tenant to maintained develop the property and further hereby **grants permission to sublet the property in his description**. This permission, the Landlord states, shall operate as the consent of the landlord under Section 14 (1) (b) of the Delhi Rent Control Act to all the sub-leases which may be granted by the tenant from time to time.
4. That the Landlord also grants **permission to the tenant to make any additions, alterations or rebuildings etc.** as he deems fit.
The covenants contained in paras 3 and 4 shall be subject to all the prevailing laws including the Delhi Development Act. The Delhi Municipal Corporation Act and such others as are applicable from time to time, and also subject to all sanctions that may be required from any of the Authority under the prevailing law.

The Tenant hereby undertakes to indemnify the Landlord against any demand or damage arising upon the Landlord in pursuance of any Act done or committed by the Tenant under the, said Covenants.

That the lease **shall be initially for a period of five years and may be extended thereon by the mutual consent of the parties**. If the Tenant elects to extend the tenancy beyond the stipulated time, he shall serve a notice of his intention to extend the same



by Registered Acknowledgement Due post on the landlord one month before the period of expiry of the tenancy. If the Landlord does not object to such extension within the time of the tenancy, he shall be deemed to have been granted this permission and the tenancy shall thereby be extended for a further period of five years. The tenancy can thus be further extended for a periods not exceeding five years at a time upon all such extensions the parties shall be governed by the terms of this lease deed.

5. The House tax and other taxes shall be paid by the Landlord but the electricity and water bills shall be paid by the Tenant.
6. That the Tenant shall allow the Landlord or his agents, with or without workmen and, at convenient, hours in the day time to enter into and upon the demised property, and view and examine the state and condition thereof and to repair the said property or notify the tenant of all damages, which shall be repaired by the tenant within one month from such notice or any further time which the landlord may allow.
7. That **on the expiry of or determination of this lease, the Tenant shall handover the property hereby demised to the Landlord or his agent in as good condition as he received it**, subject however, to the condition that the Landlord shall have spent on and over the said property and its repairs a sum of it at lease one month's rent for each year of the tenant's occupation. The tenant shall only be entitled to remove such removeable fixture as he might have put, but no other removals shall be permitted to him.
8. That the tenant paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on his part to be observed and performed shall and may peaceably and quietly possess and enjoy the said property hereby demised without any let or hindrance from the landlord or any person rightfully claiming from or under him.

IN WITNESS WHEREOF the said parties have hereto at Delhi



signed the day and year first above mentioned.”

30. Lease Deed dated 11.09.1987 clearly states that the defendant No. 3/M/s Sangeeta Leasings, through the partners i.e., the defendant Nos.1 and 2, was inducted as a tenant. The Lease Deed was executed by the owner Shri Manohar through his GPA holder Shri Rajinder Kumar Gupta. There is a clear mention in the Lease Deed that Late Shri Manohar is the owner/landlord and Non-resident Indian, permanently settled in Australia. Furthermore, the Lease deed clearly stipulated that *“The tenant shall pay the monthly rent of Rs.3000/- (Rupees three thousand only) payable by the 15th day of each succeeding month”*. It also stipulates that the lease was initially for a period of five years which may be extended by mutual consent by the parties. The tenancy so extended was not to exceed a period of five years at a time. Moreover, the extension shall be governed by the terms of this Lease Deed. The House Tax and other taxes shall be paid by the landlord but the water and electricity bill shall be paid by the tenant. Moreover, the landlord or his agent/workman would have a right to enter into the demised property to examine the state and condition thereof and for the repair of the suit property. It further stipulates that *“...on the expiry of or determination of this lease, the Tenant shall handover the property hereby demised to the Landlord or his agent in as good condition as he received it”*. Furthermore, the tenant shall have a right of peaceful enjoyment of suit property so long as he pays the rent regularly.

31. **From the various covenants of the Lease Deed, it is evident that Late Shri Manohar had leased out the suit property to defendant No. 3/M/s Sangeeta Leasings through its partners/defendant Nos. 1 and 2**



for a period of five years which was liable to be extended by the period of five years.

32. In this Lease Deed dated 11.09.1987, while indicating that the earlier tenant i.e., M/s Gandhi Estate Agency had not paid the rent and the eviction proceedings against it was pending, it was stated that since the property has not been repaired or white-washed, the tenant intends to do the same at his own cost. Thus, permission to '*develop the property*' was granted to defendant No. 3/M/s Sangeeta Leasings.

33. Further, Clause 3 of the Lease Deed stated that "*the purpose of the lease is the business of the tenant*" and permission was granted to the tenant to '*sublet the property in his description*'. The permission/consent of the landlord operated under Section 14(1)(d) of the Delhi Rent Control Act, 1958 on all the sub-leases which may be granted by the tenant from time to time. The defendant No. 3/M/s Sangeeta Leasings was given the omnibus rights to evict the tenants already in occupation, and also the right to maintain and develop the suit property and to make additions and alterations as well as the right to sub-let the same.

34. Sh. Rajinder Kumar Gupta, GPA, as per the submissions of the defendants as well, he had been authorized to get the tenant M/s Gandhi Estate Agency Shri evicted for which he paid Rs. 1,50,000/- in settlement at his own cost and expense, and also let out the suit property to the defendants vide a written Lease Deed dated 11.09.1987 for and on behalf of the owner. Since Sh. Rajender was spending on the upkeep and the maintenance of the suit property, Sh. Rajender was authorized to keep the rent. Thereafter, various parts of the suit property were sublet from time to time by the defendants, as authorized under the Lease Deeds and rent was to be paid to



Sh. Rajender for and on behalf of the owner.

35. On 22.04.1999, the Lease Deed in favour of defendant No. 3/M/s Sangeeta Leasings was extended for a period of ten years, subject to periodic renewal on the same terms and conditions as the original Lease Deed dated 11.09.1987. There again is a clear admission that the tenancy of defendant No. 3/M/s Sangeeta Leasings got further extended on 22.04.1999, for a period of ten years.

36. Again on 01.10.2013, the Lease Deed was renewed in favour of the defendant No. 3/M/s Sangeeta Leasings on the same terms and conditions for a period of ten years, subject to periodic renewal. It was mentioned in the Lease Deed dated 01.10.2013, the defendant No. 3/M/s Sangeeta Leasings and its partners were exclusively and solely in possession of the suit property and the Lease Deed dated 11.09.1987 was renewed for a period of ten years from 01.10.2013. It is asserted that the said Lease Deed is a subsisting and valid till 30.09.2023.

37. The defendants themselves have mentioned in the Written Statement that on 31.03.1995 and 12.04.1995, Shri Rajinder Kumar Gupta sent two letters to Late Shri Manohar, discussing the dilapidated condition of the structure on the suit property and on 31.03.1997, the defendant No. 3/M/s Sangeeta Leasings entered into a Property Development Agreement with one M/s Kalyani Builders to reconstruct and redevelop the whole suit property.

38. This again reflects that it was Sh. Rajinder Gupta who was communicating with Late Shri Manohar for the upkeep and the maintenance of the suit property, again demonstrating that Late Shri Manohar was the owner/ landlord of the suit property. Sh. Rajinder, as an attorney holder of



Sh. Manohar, may have got the work executed through Defendant No.3 which was in this business, but the status of the defendants was admittedly that of tenants, which never got transformed into that of the owners.

39. The defendants have themselves asserted that they were inducted as a tenant *vide* original Lease Deed dated 11.09.1987, which was renewed regularly and their tenancy is subsisting till 30.09.2023. There cannot be any more clear and unambiguous admissions on behalf of the defendant Nos. 1 to 3 who admit that they are the tenants in the suit property. *There is a clear admission of defendant No.3/M/s Sangeeta Leasings, the Partnership Firm, is a tenant in the suit property.*

40. **Therefore, the relationship between the plaintiffs and the defendant Nos. 1 to 3 of landlord and tenant is admitted.**

41. *The defendants no. 4 to 7 are admittedly the sub-tenants inducted by defendant No.3 for which it was authorized by Clause 3 of the Lease Agreement.*

42. The suit property was sub-let by the defendant Nos. 1 to 3 to the British Council Division India. In the Letter dated 15.05.2013, Shri Manohar stated that defendant No.1 has the right to sub-lease the property. It was stated as under:

“15 May 2013

British Council Division India

17 Kasturba Gandhi Maarg

New Delhi - 110001 .

Dear Sir,

RE: E12/4,Vasant Vihar, New Delhi

This is to confirm that I, SHRI MANOHAR son of late Damodar Dass and my wife Hem Manohar, resident of 16 Johnson Close, Winthrop WA 6150, Australia, we are the owner of House No.



E12/4- Vasant Vihar, New Delhi.

We agree that we have no objection in Mrs Rachna Gupta, wife of Mr Rajendra Gupta of R-235 Greater Kailash - 1, New Delhi - 1100048 who now has tenancy rights to sub-lease.

For greater clarity we agree, that we, have no objection in Mrs Rachna Gupta leasing the premises to British Council located at 17 Kasturba Gandhi Marg, New Delhi 110001 through its, authorised representative, Mr Rob Lynes, Minister of Cultural Affairs, British Council Division for a period of 2 (two) years commencing from 15th May 2013 to 14 May 2015.

Thanking you,

Yours truly,

Shri Manohar.”

43. Thus, Shri Manohar has expressly given his assent to the defendants to further sub-let the properties, whereby reaffirming that late Sh. Ram Manohar continued to be the owner and the sub-tenants were inducted lawfully.

Maintainability of Suit as Rent was Rs. 3,000/-p.m.:

44. **An objection has been taken on behalf of the defendants** that, as is evident from the Lease Deed, the rent of the property payable by them to Shri Manohar was Rs. 3,000/- and thus, the Suit is not maintainable under Section 50 of the Delhi Rent Control Act.

45. Section 2 (a) of the Delhi Rent Control Act defines basic rent as under:

“Section 2 (a). “basic rent” in relation to premises let out before the 2nd day of June, 1944, means the basic rent of such premises as determined in accordance with the provisions of the Second Schedule.”

46. Further, Section 3(c) of the Delhi Rent Control Act defines ‘premises’ to mean, “any premises, whether residential or not, whose monthly rent



exceeds three thousand and five hundred rupees”, it uses the word rent of “*the premises*” and not the receipt of rent by landlord from the tenant. Therefore, where ever the rent being generated from the premises is more than Rs 3,500/-p.m., the protection of the Rent Act ceases to be available to the tenant.

47. The purport of the Section 3(c) in The Delhi Rent Control Act, 1958 was explained in the case of PS Jain Company Ltd. v. Atma Ram Properties (P) Ltd & others, (1997) DLT 308(DB). It was observed that where the tenant is paying only Rs. 900 p.m. to the plaintiff, while he has sublet the premises in two units, one for Rs. 40,000 p.m. and another for Rs. 4,500 p.m, sub-tenants would have no protection of the Rent Act.

48. Similarly, in the case of Atma Ram Properties (P) Ltd. vs M/S. Pal Properties (India) Pvt. Ltd (2001) 91 DLT 438, a Co-ordinate Bench of this Court , relying on the case of PS Jain Company Ltd. (Supra) had observed that for the purpose of Section 50 of the Rent Control Act, the relevant rent is the one which is paid by sub-tenant to the tenant. As the rent paid by the sub-tenant to the tenant was more than Rs. 3,500/- PM, therefore, no protection under the Delhi Rent Control Act was held to be available to the defendants.

49. It may be thus, concluded that in the event Rent payable by the sub-tenant to the tenant is more than Rs 3,500 p.m., the premises would be out of the scope of the Delhi Rent Control Act, even if the rent payable by the tenant to the Principal Landlord is less than Rs.3,500/- p.m. Though the defendant No. to 3 had been inducted as a tenant at the rate of Rs. 3,000/- per month *vide* Lease Deed dated 11.09.1987 but the Lease Deed authorised the defendant No. 3 to sublease the suit property. There is no denial that the



suit property had been subleased from time to time. The suit property had been subleased for a period of two years, from 15.05.2013 to 14.05.2015 to the British Council Division India.

50. Even now, the suit property is subleased and is in occupation of the defendant Nos. 4 to 7. As per the various Lease Deeds dated 14.01.2011, 14.12.2012, 17.09.2015 and 05.11.2018, executed in favour of defendant No. 6, the rent being fetched in respect of the suit property is more than Rs. 2,00,000/- for one floor which implies that the rent is much more than Rs. 3,500/-.

51. **Thus, the Suit is maintainable and cannot be said to be barred** under the provisions of the Delhi Rent Control Act.

52. ***The Twin pronged defence*** is set up by the defendants No.1 to 3 to defend their possession; ***firstly*** defendant no.3, a Partnership Firm through the defendant Nos. 1 and 2, its Partners, was inducted as tenants by the owner Late Shri Manohar through his General Power of Attorney holder Sh. Rajinder Gupta (husband of defendant no.1 & father of Defendant No.2) in whose favour an Irrevocable General Power of Attorney was executed on 17.01.1979 by the former and thus, plaintiffs have no right to seek possession; and ***secondly*** that Shri Manohar, during his lifetime had entered into an Oral Agreement to Sell (ATS) on 08.01.1984, and the possession of defendants was protected under Section 53A of Transfer of Property Act, since it was received pursuant to the ATS.

A. Execution of Irrevocable General Power of Attorney dated 17.01.1979 in favour of Sh. Rajinder Gupta:

53. The defendants have explained which is not disputed, that the suit property had been let out by Late Shri Manohar to one M/s Gandhi Estate



Agency in the year 1976, which was due to expire in October, 1979. They constantly defaulted in payment of rent and continued to occupy the suit property, despite best efforts of Late Shri Manohar. Since Sh. Hem Manohar was intending to shift to Australia in the year 1978, he executed the GPA dated 17.01.1979 to Shri Rajinder Kumar Gupta, husband of defendant No. 1/Rachna Gupta for the purpose of management and for initiating eviction proceedings against the defaulting tenants and also to appear in the Courts and Authority in regard to the suit property.

54. The defendants are basing their right to continue on the basis of *General Power of Attorney dated 17.01.1979*. It thus, becomes pertinent to examine the **GPA** to ascertain the merit of the contentions of the defendants that plaintiffs had no right to seek possession as owners. The General Power of Attorney dated 17.01.1979, which has been placed on record by the defendants, reads as under:

“General Power of Attorney

Know all men by these presents that I Shri Manohar, Son of shri Damodar Dass, resident of R-235, Greater Kailash, New Delhi do hereby constitute and appoint Sh. R.K. Gupta, Son of Lala Hansraj Gupta, resident of R-235, Greater Kailash, New delhi and Shri Ram Parkash Sharma, Son of Shri Arjun Dass Ji, resident of 41, Ajmeri Gate Delhi as my lawful attornies to act in my name and on my behalf and to do all or any of the following acts, matters and things and to exercise all or any of he powers and authorities hereby conferred singly that ie to say:-

- 1. To appear and act in all the courts, civil revenue, or criminal, whether original or appellate in the registration offices and in any other office of Government, Municipal Corporation of Delhi, Delhi Development Authority or any other local authority;*
- 2. To manage and to deal with my property No. E-12/4, Vasant*



Vihar, New Delhi and to take out necessary proceedings in connection therewith in any competent court or Tribunal as may be required from time to time;

3. To initiate eviction proceedings in connection therewith and to prosecute the same for an on my behalf and also to prosecute the eviction proceedings already filed by me against my tenant. M/s. Gandhi agency in the court of the Additional Rent Controller, Delhi and to take all steps necessary in that behalf;

4. To institute suits and other legal proceedings to sign and verify complaints, written statements, petitions of claims and objections, memorandum of appeal and petitions and applications of all kinds and to file them in any such court or office; and to defend any proceedings that may be filed against me and to prosecute them on my behalf and take all steps necessary therefor.

5. To appoint any advocate, or any other legal practitioner;

6. To compromise, compound or withdraw cases, to confess judgment's and to refer cases to arbitration;

7. To file and receive bank documents, to Deposit and withdraw money, and to grant respite therefore to apply for copies of any court records and to inspect the same.

8. To obtain refund of stamp duty or repayment of court fees.

9. To purchase property at court auction sales in execution of my decrees up to the amount of the decrees ;

10. To take delivery of possession of property III execution of my decrees or of property purchased for meat an auction-sale;

11. To realize debts due to me, to collect rents from my tenants.

12. To grant leases of my property;

13. To manage and look after my business or businesses which I am interested in any capacity.

14. To accept serves of any summons, notice or writ issued by nay court or officer against me.

Generally to act as my attorney or agent in relation to the matters aforesaid and all other matters in which I may be interested or



concerned either jointly or severally and on my behalf to execute and do all deeds, acts or things as fully and effectually in all respects as I myself do if personally sought.

I hereby take myself, my heirs, executors, administrators and legal representatives, ratified and confirm and agree to ratify and confirm whosoever my said attorney shall do or parapet to do by virtue of this Deed.

In witness whereof, I have signed this deed on this 17 the day of January, 1979.

WITNESS:”

55. The contents of GPA show that Shri Rajinder Kumar Gupta was appointed as his agent, by Late Shri Manohar. This document enabled Shri Rajinder Kumar Gupta to act for and on behalf of Late Shri Manohar, to do as necessary to manage the suit property and to get the tenants evicted and also to represent him in the court proceedings in relation to the suit property. It, in no manner, created any proprietary rights in his favour nor was it given in lieu of any consideration.

56. **Section 202 of the Contract Act, 1872** provides for termination of agency, where an agent has interest in the subject-matter and reads as follows:

“Section 202. Termination of agency, where agent has an interest in subject-matter.-

Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.”

57. The Supreme Court in the case of Seth Loon Karan Sethiya vs Ivan E. John and Others 1968 SCC OnLine SC 252, observed that where *the agency is created for valuable consideration* and authority is given to effectuate a



security or to secure interest of the agent, the authority cannot be revoked.

58. The Supreme Court of India in State of Rajasthan and Ors. vs Basant Nahata (2005) 12 SCC 177, has held that when a power of attorney is 'coupled with interest' it becomes irrevocable. It was explained that the term 'coupled with interest' is used to describe a type of power of attorney that gives the agent the authority to handle not only the principal's property but also any interests which may result from such authority. In such cases, the power of attorney becomes irrevocable, i.e., it cannot be revoked at the sole discretion of the principal.

59. With respect to the nature of an agent's interest, the High Court of Delhi in Harbas Singh vs Shanti Devi 1977 SCC OnLine Del 102, opined that '*when an authority is a security, or other proprietary interest or part of the security or its conferring constitutes the performance of the obligation on the party creating it, such authority is referred to as 'power coupled with interest'*' and is irrevocable.

60. In the present case, it is evident from the afore mentioned clauses of the General Power of Attorney dated 17.01.1979 that it had not been executed for a valuable consideration nor was it a part of a document created for a consideration. It is also not executed as part of the alleged oral Agreement to Sell pleaded on behalf of Shri Rajinder Kumar Gupta which is of 08.01.1984 while the GPA is of 1979. Therefore, is not even a part of alleged oral Agreement to Sell claimed in favour of Shri Rajinder Kumar Gupta. It was a simplicitor General Power of Attorney authorising Shri Rajinder Kumar Gupta to manage the suit property for and on behalf of Sh. Hem Manohar and was not created for any valuable consideration.

61. The plea of the defendants that the GPA executed in favour of Sh.



Rajinder was irrevocable or that the plaintiffs have no right to terminate the tenancy, is not tenable under law.

B. Whether Possession was handed over pursuant to the Oral Agreement to Sell, and Projected under S. 53A of Transfer of Property Act:

62. Apart from claiming the GPA to be irrevocable, defendant Nos. 1 to 3 have further claimed that sometime in the year 1984, when Late Shri Manohar visited India for the marriage of his daughter, Smt. Vivita Tayal/plaintiff No. 2 herein, he and Shri Rajinder Kumar Gupta along with defendant No. 1/Rachna Gupta had a joint meeting and they entered into an **Oral Agreement to Sell** on 08.01.1984 on the following terms: -

- (i) *That the subject property shall be transferred to Shri Rajinder Kumar Gupta, by transferring the title either in the name of his wife, Smt. Rachna Gupta, or jointly in the name of both of them for a sale consideration of Rs. 20,00,000/-, out of which Rs. 4,00,000/- were paid by Shri Rajinder Kumar Gupta, while the balance Rs. 16,00,000/- was agreed to be paid at the time of execution of Sale Deed/transfer documents.*
- (ii) *The registration and conveyance charges of the suit property were to be made by Shri Rajinder Kumar Gupta as per the requisite procedures and formalities which were to be organised by Shri Rajinder Kumar Gupta and agreed to be forwarded to Shri Manohar for execution, so that Shri Rajinder Kumar Gupta could it registered.*
- (iii) *It was further agreed that complete unhindered exclusive right, interest, possession and beneficial use and enjoyment of the suit*



property shall continue to remain with Shri Rajinder Kumar Gupta till the execution of the requisite title documents.

63. The first thing which emerges from the averments of the defendant Nos. 1 to 3 is that even *if an Oral Agreement to Sell, was entered into between Late Shri Manohar and Shri Rajinder Kumar Gupta on 08.01.1984, it had no concern with the defendant Nos. 1 to 3.* Therefore, whatever may have been the understanding between the plaintiffs and Shri Rajinder Kumar Gupta, defendant Nos. 1 to 3 cannot claim to have become the owners or having come into the possession of the suit property pursuant to the said alleged Oral Agreement to Sell between Late Shri Manohar and Shri Rajinder Kumar Gupta.

64. *From the averments made in the Written Statement coupled with admitted document of the defendants,* it is evident that it was a tenancy created in favour of the defendant Nos. 1 to 3 which is *de hors* the alleged Agreement to Sell which Shri Rajinder Kumar Gupta may have entered into with Late Shri Manohar. The judgement of Mukesh Gupta (Supra), relied upon by the defendants is of no assistance since in that case, the ATS was alleged between the Landlord-tenant while in the present case, the alleged ATS is not with the defendants who are admittedly the tenants, but they are seeking the perfection of title on the basis of the ATS between landlord and Sh. Rajinder, and not with the defendants. Benefit if any, can be claimed by the latter, who evidently has already filed a Suit for Specific Performance of the alleged Oral Agreement to Sell. The defendants are attempting to obliterate the distinction between them and Sh. Rajinder who may be related to the defendants, but had been interacting with the plaintiff in different capacity of being the GPA holder of the landlord and has an independent



entity from the tenants.

65. The defendants have further asserted that Late Shri Manohar had addressed the Letter dated 20.06.1989, expressing his intention to transfer the ownership of the suit property to Shri Rajinder Kumar Gupta or any of his family member. Late Shri Manohar wrote that *“Dear Rachna/Rajjan., The house is yours!! Why not transfer it in your name. Hope you understand that now I am getting old. With love and best wishes to you all”*.

66. The defendants have also asserted that Shri Rajinder Kumar Gupta was taking care of the suit property in getting it redeveloped and had been paying the House Tax. The House tax may have been paid by Sh. Rajinder, but it was clearly for and on behalf of Late Sh. Hem Manohar, as the House Tax receipts are in his and Hem Manohar’s name.

67. Furthermore, in around 1999, Late Shri Manohar and Shri Rajinder Kumar Gupta started deliberation for the mode and manner of the conveying the suit property in the name of defendant No. 1/Rachna Gupta. On 03.06.1999, the Law Firm based in Australia issued a letter of legal opinion to Late Shri Manohar and the plaintiff No. 1/Hem Manohar titled *“Conveyance to Rachna Gupta”*, wherein the Law Firm had advised to convey the suit property to defendant No. 1/Rachna Gupta through two consecutive Gift Deeds; one Gift Deed transferring the entire interest of Shri Manohar to his wife i.e., the plaintiff No. 1/Hem Manohar who in turn would execute the second Gift Deed transferring the entire interest in favour of the defendant No. 1/Rachna Gupta (*her sister*).

68. The letter dated 03.06.1999 reads as under:

“3 June 1999

Mr and Mrs S Manohar



16 Johnson Close

WINTHROP WA 6150

Dear Shri and Hem

CONVEYANCE TO RACHNA GUPTA

Further to your recent attendance at our office we have prepared and enclose an Indemnity Bond for re-typing on the appropriate stationary and signing by Rachna Gupta.

We presume that the conveyance will proceed on the basis of the Deed of Gift which has already been signed by yourselves. We confirm that to minimise taxation the conveyance must be between Hem and her sister on the basis that conveyances between blood relations do not attract the same rate of taxation.

To effect that, Shri has agreed to transfer his interest III the Plot to Hem prior to Hem transferring the whole of the Plot to her sister.

It is a condition of the conveyances that the consent of the President of India and the Delhi Development Authority be obtained. That condition has been granted subject to you both entering into Indemnity Bonds and also undertaking not to make application to acquire property from Delhi Development Authority in the future.

The propose of the enclosed Indemnity Bond is to seek the undertaking of Rachna Gupta to keep you both indemnified in relation to any liability which you may incur as a result of granting the Indemnity Bonds and also as a result of the conveyance from Shri to Hem and the conveyance. from Hem to her sister.

Yours faithfully

Gibson &Gibson”

69. It is explained by the defendants themselves, that in pursuance of this letter, the first Gift Deed was got prepared on 22.02.2000 by Shri Manohar in favour of his wife, plaintiff No. 1/Hem Manohar and was forwarded to Shri Rajinder Kumar Gupta for getting it registered in Delhi, but it could not be done because of some technical objections raised by the DDA. Shri



Rajinder Kumar Gupta vide E-mail dated 13.04.2012 informed this development to the plaintiff No. 2/Vivita Tayal and stated that the '*after a few years when I had some money, I suggested that Jijaji gifts the property to Hemji with Hemji gifting the property to Rachna. This was done but the DDA did not clear the gift as there were some problems*'.

70. Thus, it is categorically admitted by the defendants that the said Gift Deed could not be registered. It is also established from the averments made in the Written Statement that though Late Sh. Manohar may have had the intention of transferring the Suit property in favour of Shri Rajinder Kumar Gupta, it never got effectuated through execution of requisite documents. Mere intention cannot tantamount to creating title in the suit property. Pertinently, though in the communications since 1984 till the filing of the Suit, there is indication that Sh. Manohar had an intent to transfer the suit property to Sh. Rajinder, but in none of these communications any reference whatsoever was made, about this alleged oral ATS.

71. It is also significant to note that Late Shri Manohar was not the exclusive owner of the suit property but his wife, plaintiff No. 1/Hem Manohar was an equal shareholder in the suit property to the extent of 50%. Late Shri Manohar may have intended to sell the suit property to Shri Rajinder Kumar Gupta, but he could not have agreed to sell the entire suit property to him, without the consent of his wife.

72. *Be as it may, it is already noted above that the defendant Nos. 1 to 3 cannot claim any benefit of this alleged Oral Agreement to Sell between Late Shri Manohar and Shri Rajinder Kumar Gupta, even if Shri Rajinder Kumar Gupta is the husband of defendant No. 1/Rachna Gupta.* It is defendant no.3 which was inducted as a tenant and the position has remained



the same till date. Moreover, there may have been some talks between Sh. Rajinder and late Sh. Hem Manohar about sale of suit property, but the sale has not fructified till date and the plaintiffs continues to be the owners and defendant no.3 as the tenant in the suit property. It is hereby clarified that the aforesaid observations are limited to the controversy in present suit to ascertain whether the defendants' possession in the suit property is pursuant to an Agreement to sell, and thus, protected.

Termination/Forfeiture Of Teanacy:

73. Having established that the plaintiffs and the defendant No.3, were in a *landlord-tenant relationship*, the next aspect of significance is the termination of tenancy. As per the Lease Deed dated 28.09.2013, the lease was renewed w.e.f. 01.10.2013 for a period of 10 years i.e. till October 2023 while the present suit has been filed on 19.11.2019.

74. The pertinent question which thus, arises is whether the tenancy has been validly terminated at the time of filing the Suit, entitling the plaintiffs to possession.

Determination of Lease under Section 111 of the Transfer of Property Act:

75. The giving of property on lease is a contract between the parties who are free to agree to any terms which may be agreed orally or may be reduced to a written Lease Deed. The relationship of landlord/tenant is essentially governed by the agreed terms of the Lease. In the present case, the plaintiffs have filed the present Suit, wherein they have specifically averred that the defendants have forfeited their right to continue in the suit property on account of non-payment of rent and for challenging the Title of the plaintiffs



and thereby, the Plaintiffs seek eviction of the defendants from the suit property.

76. Section 111 of the Transfer of Property Act provides for conditions which may entail determination of tenancy. It reads as under:

“Section 111. Determination of lease-

A lease of immoveable property determines--

(a) by efflux of the time limited thereby:

.....

(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

(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.

....

77. Therefore, this provisions expounds that the lease may be determined by *efflux of time; forfeiture on breach of conditions of lease Deed* or by *giving a Notice of termination*. It must be expressly stated in the Lease that upon such breach of the condition, the lessor is entitled to re-enter the premises or take possession thereof. Even when the lease terminates by forfeiture, a Notice under. S. 114A of TPA is required to be served upon the Lessee, expressly stating the condition that has been breached as specifically provided in the Lease Deed. The lessor is entitled to re-enter the premises only under the aforesaid circumstances.



I. Efflux of Time:

78. There can be determination of tenancy on expiry of tenancy period i.e. *by efflux of time*, which is not the situation in the present case as the period of tenancy was till 2023.

II. Termination by forfeiture under S.111(g) of TPA:

79. The ***next situation for determination of tenancy is by forfeiture*** as provided in *Clause (g) of Section 111* which may happen, aside from other situations, in case the lessee breaks an express condition of *non-payment of rent* **or** *in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself*.

80. The Law also gives an additional protection to the tenant by making it necessary for the lessor under Section 114A of TPA, to give a Notice in writing to the lessee of his intention to forfeiture of lease on account of breach of a condition, unless provided expressly in the Lease Deed itself.

81. Section 114 A of the Transfer of Property Act, 1882 reads as under: -

“Section 114A: --- Relief against forfeiture in certain other cases.— Where a lease of immovable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach;

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, underletting, parting with the possession, or disposing, of the property leased, or to an express condition



relating to forfeiture in case of non-payment of rent.”

82. The tenant who has committed breach of any express condition entitling the lessor to forfeiture of the lease, has further protection by way of *Section 114A of TPA* which provides that where a lease of immoveable property is determined by forfeiture for a breach of an express condition, no suit for ejectment shall lie unless and until the lessor has served on the lessee a Notice in writing, specifying the particular breach complained of, and if the breach is capable of remedy, requiring the lessee to remedy the breach, and the lessee fails, within a reasonable time from the date of the service of the Notice, to remedy the breach.

83. Further protection is given under *Section 114 of TPA* if the forfeiture is on account of non-payment of rent and a suit for possession is filed, as the court may not grant possession if the tenant pays the entire rent along with interest and cost of litigation, within 15 days of filing the Suit, unless specifically already provided in the Lease Agreement that non-payment of rent would entail eviction. However, it has a rider that nothing would apply to an express condition against the assigning, sub-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.

84. In the case of *Praduman Kumar vs. Virendra Goyal (Dead) By L.RS.*, 1969 (1) SCC 714, the Apex Court observed that where the forfeiture of the Lease Deed is on account of non-payment of rent for three years, the tenant is entitled to benefit under Section 114 of the Transfer of Property Act, 1882 and an opportunity has to be given to the tenant to pay the arrears of rent and if he so does, he is relieved against the forfeiture.



85. In the case of Bharathi Shetty vs. B. Hanumanthappa, MANU/KA/1132/2013, wherein it has been explained that *unless the terms of the lease stipulate that the lessor would have a right to re-enter the premises*, in case of default in payment of rent, the lease cannot be forfeited under Section 111 of the Transfer of Property Act, 1882. No doubt, as per Section 108 (c) and (i) of the Transfer of Property Act, 1882, the lessor has the right for due payment of rent and the lessee cannot enjoy the uninterrupted possession without payment of the rent of the tenanted premises. But this right which is introduced by this statute and which the lessor is deemed to possess in the absence of contract or local usage to the contrary, cannot be brought into the four corners of the forfeiture Clause spelt out under Section 111(g) of the Transfer of Property Act, 1882, clothing the lessor with a right to re-enter, in case where the lease is for a fixed duration. *Unless the lease provides that on breach of the condition of payment of rent, the lessor may re-enter, the parties cannot forfeit the lease Agreement in terms of Section 111 of the Transfer of Property Act, 1882.*

86. In the case of Geetabai Namdeo Daf vs. B.D. Manjrekar, AIR 1984 Bombay 400, it was explained that if the tenancy is to come to an end by virtue of the principle of forfeiture, what is required under the law is that the tenancy should be for a particular period and the *Lease Deed must contain a clause of forfeiture on the ground of breach of certain conditions provided therein*. If the breach is committed, the tenancy becomes liable for forfeiture even before the expiry of the agreed period of the tenancy. When the tenant incurs forfeiture, it is further required that the landlord must exercise his right of forfeiture either expressly or by necessary implication. If he exercises the right of forfeiture, then the tenancy comes to an end even



before the agreed period of tenancy.

87. Similarly, the Apex Court in the case of Modern Hotel, Gudur, Represented by M.N. Narayanan vs. K. Radhakrishnaiah & Others, AIR 1989 SC 1510, observed that the tenant is relieved of the rigors of forfeiture Clause if there is no such clause incorporated in the Lease Deed.

Forfeiture of tenancy Under Section 111(g) of Transfer of Property Act on account of non-payment of rent:

88. Now coming to the facts of this case, it would be pertinent to refer to Clauses 2 and 8 of the Lease Deed dated 01.10.2013 in regard to rent, which read as under: -

"2. The tenant shall pay the monthly rent of Rs. 3000/- (Rupees three thousand only) payable by the 15th day of each succeeding month.

....

8. That the tenant paying the rent hereby reserved and observing and performing the covenants and conditions herein contained and on his part to be observed and performed shall and may peaceably and quietly possess and enjoy the said property hereby demised without any let or hindrance from the landlord or any person rightfully claiming from or under him."

89. In the case of Nadeem Ahmad Kazmi vs. Press Clud of India & Others, CM(M) No. 1341/2008 decided on 16.09.2009 by the Coordinate Bench of this Court, similar facts as in hand, came up for consideration when a Suit was filed for possession, recovery of arrears of licence fee, damages/mesne profits, wherein there was a similar clause (as in the present case) in the Lease Deed which reads as under: "*13.6 That on the conditions that the lessee continue to pay the rent hereby reserved and observe and perform several convenience on their part herein contained, the lessee shall*



peacefully and quietly hold enjoy the premises during lease period(s) without any interruption of disturbances by lessor or any other person lawfully claiming under or in trust for his/her or any other person whatsoever."

90. The said Clause provided that the lessee shall regularly pay the lease rental reserved at the time and in the manner aforesaid. It further provided that on the condition that the lessee continues to pay the rent hereby reserved and observe and perform several conveniences on their part herein contained, the lessee shall peacefully and quietly hold enjoy the premises during lease period without any interruption of disturbances by lessor or any other person lawfully claiming under him.

91. While interpreting these clauses, it was held that there was a positive obligation placed on the tenant to pay the rent in time as contemplated therein and to perform the contract and that such obligation to pay rent was a binding pre-condition to the application of the tenant to continue in possession without interruption. However, if this pre-condition of payment of rent is breached, the landlord is liberated from its obligation to let tenant enjoy the lease uninterruptedly and he would be entitled to forfeit the lease under Section 111 (g) of the Transfer of Property Act, 1882.

92. In the present case as well, similar Clause exists which implies that there is an express condition that the payment of rent is a pre-condition to create a corresponding obligation on the landlord to let the tenant enjoy the premises uninterruptedly. Thus, the right of the tenant to continue in possession is subject to regular payment of rent to the plaintiffs.

93. The defendants have categorically stated in their Written Statement



that the rent due was paid by them to Sh. Rajendra who was authorised to enjoy the property to his best advantage. The defendants themselves have mentioned in the Written Statement that Shri Rajinder Kumar Gupta acted on the said General Power of Attorney dated 17.01.1979 and got the suit property vacated at his own cost and expense which ran into a sum of approximately Rs. 2,10,000/-, including costs of litigation, settlement and other expenses. After vacation of the suit property, Shri Rajinder Kumar Gupta had incurred substantial expenses amounting to approximately Rs. 1,80,000/-.

94. Late Shri Manohar in the letter dated 20.12.1987 stated that the defendant No.3/M/s Sangeeta Leasings may use the suit property to its best advantage and the defendant Nos. 1 and 2 here may continue to take interest in the suit property and use it for their maximum benefit. This Letter reads as under:

“Dear Rajjan,

I visited property No. 12/4, Vasant Vihar, New Delhi and am happy to note about the improvements in the same. Sanjay did a great job in getting the property vacated from tenants and encroachers.

*I have seen the lease deed executed by you in favour of Sangeeta leasing. **Sangeeta Leasing may further sub-let the property to their best advantage.***

I am sure that Rachna and Sanjay will continue taking interest in the said property and use the same for their maximum benefit.

Yours sincerely,

Shri Manohar”

95. This Letter relied upon by the defendants, contains a clear stipulation that the defendants were inducted as a tenant with a right to sublet, by late Shri Manohar through Sh. Rajinder Gupta as his GPA holder. It was stated



that '*Sangeeta Leasings may further sub-let the property to their best advantage*' and that '***Rachna and Sanjay will continue taking interest in the said property and use the same for their maximum benefit***'

96. Thus, there was a clear permission given by Shri Manohar to Shri Rajendra and the defendant No.2 and 3 to receive interest in the said property, implying that they had the right to receive the rent from sub-tenants and the rent from defendant no.1 to 3 was to be received by Sh. Rajinder for and on behalf of Late Sh. Manohar with a right to retain it.

97. The terms of the GPA dated 17.01.1979 and the Letter dated 20.12.1987 when read together, lead to a conclusion that Shri Manohar had permitted Shri Rajendra, his GPA holder to make use of the suit property and enjoy the rent received from the tenants. Be as it may, Shri Rajendra is not a party to the present suit, and has not been impleaded herein and no relief of recovery of rent has been claimed against him.

98. While the defendants in the present case, have claimed that they have paid the rent to Shri Rajinder Kumar Gupta, without going into the controversy of whether the rent was paid to him, Shri Manohar died in the year 2017 and Shri Rajinder Kumar Gupta has ceased to be as General Power of Attorney/agent to continue to receive the rent from defendant Nos. 1 to 3.

99. Therefore, the rent @ Rs. 3,000/- if any, paid to Shri Rajinder Kumar Gupta who has ceased to be the authorised agent does not absolve the defendant Nos. 1 to 3 from their obligation to pay the rent to the plaintiffs, after 2017.

100. In the case of Anil Suri and Ors. vs. Vikrant Khanna and Ors. in CM (M) No. 1341/2008 decided on 16.09.2009 it was observed that once the rent



is not being paid by the tenants, the said default entitles the ‘petitioners’ to terminate the lease deed.

101. *It therefore, has to be necessarily concluded that no rent as contemplated under the Lease Deed has been paid to the plaintiffs from the date of demise of Shri Manohar in the year 2017.*

102. Further, in terms of proviso to Section 114A of TPA, no Notice is required to be served if there is express condition provided in the Lease Deed itself about forfeiture in case of non-payment of rent. Moreover, the defendants even after the filing of the Suit, have not paid the arrears of rent along with interest and cost of litigation and therefore, cannot claim benefit of Section 114 of the TPA which provides for protection of the possession of the tenant in case they pay the rent in arrear, together with interest thereon and his full costs of the suit.

103. *The tenancy thus, stands terminated by forfeiture, thereby making the defendants liable for eviction.*

(b) Forfeiture under Section 111 (g)(2) of the Transfer of Property Act, 1882 on account of denial of Title of the Plaintiffs:

104. The other aspect is that Section 111 (g)(2) of the Transfer of Property Act, 1882 provides that the lessor shall be entitled to *forfeit the tenancy in case the tenant sets up a title or a right inconsistent with the relationship of landlord and tenant either in himself or third person.*

105. In the present case, Lease Deeds have been executed by the defendant No. 3 in favour of the defendant Nos. 6 in its own name, mentioning itself as the owner and landlord of the suit property. One Lease Deed between defendant No. 3 and defendant No. 6 has been placed on record by them, wherein defendant No. 3 has mentioned itself to be the landlord of the suit



property. The relevant clauses in the Lease Deed dated 14.01.2011 reads as under:

*“THIS LEASE DEED is made and executed at New Delhi this January 2011 between **SANGEETA LEASING** having its office at **R-235, Greater Kailash-1, New Delhi**, through its Partner, **Mr. Sanjay Gupta** (hereinafter called the **"LESSOR"** which expression shall include the constituents of the firm their respective legal heirs, successors, representatives, administrators and assignees) of the ONE PART.*

AND

*Mitutoyo South Asia Pvt Ltd. a company registered under the Companies Act, 1956 having its registered office at 0-122, Okiha Industrial Area, Phase-I, New Delhi-110020 and being represented by its Managing Director, Mr. Narinder Bajaj (hereinafter called the **"LESSEE"** which expression shall include its successors and assigns) of the OTHER PART.*

***WHEREAS the LESSOR is the absolute and lawful owner** of all that the First Floor of the property bearing Municipal No. E-12/4, Vasant Vihar, New Delhi- 110057 having all the facilities attached thereto having full and unfettered rights to let out the same or any portion thereof on such terms and conditions as they may think fit.*

...”

106. Similar claims of ownership were made by defendant No.3 in the Lease Deed dated 14.12.2012, 17.09.2015, 05.11.2018. Such claims by the tenant i.e. defendant No.3, that it was the owner of the property, gives the right to the owners i.e. the plaintiffs to determine the Lease Deed by forfeiture.

107. It is also pertinent to note that, the defendants are claiming a title adverse to that of the plaintiffs and protection of their possession by asserting a plea of oral Agreement to Sell, which again is the denial of the



title of the landlord.

108. *The plaintiffs are, therefore, entitled to forfeit the tenancy forthwith on this ground as well.*

109. ***To sum up***, it is established from the admissions of the defendants themselves that there is no rent paid to the plaintiffs since 2017, thereby leading to breach an express condition contained in the Lease Deed dated 01.10.2013, thereby entitling to the forfeiture of the Lease Deed which otherwise provided for the lease period till 2023. Also, the defendant no.3 having been inducted as a tenant, is estopped under Section 115 of Indian Evidence Act to deny the title of the landlord. Having done so, it is liable to have the tenancy forfeited under Section 111(g) of TPA, as is the situation in the present case.

110. **The tenancy thus, stands forfeited under Section 111 (g) TPA, entitling the plaintiffs to get the possession of the Suit property.**

III. ***Determination of tenancy by service of Notice of under S.111(h) TPA:***

111. The lease is a contract where both the parties agree to certain conditions, covenants and stipulations. Section 111(h) of the Transfer of Property Act provides for determination of tenancy *by serving a Notice of termination. It reads as under:*

“Section 111- A lease of immoveable property determines

....

(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.”

112. In the case of Geetabai Namdeo Daf vs. B.D. Manjrekar, AIR 1984 Bombay 400, it was explained that there is a world of difference between



liability of the tenant for eviction on the ground of forfeiture of tenancy and his liability on the ground of termination of the tenancy by a Notice of termination simplicitor. It was further explained that when the lease is not for particular fixed period but is only a periodical lease Deed or a yearly lease or a monthly lease and if the agreement of tenancy provides that the lease can be terminated by *Notice of termination as contemplated by Section 106 of the Transfer of Property Act*. The tenant might happen to be a paragon of virtue and he might have been paying every single farthing of the rent with strict punctuality and might have been performing every term of the tenancy with 'enviable devotion'; still, if the tenancy is terminated by the Notice to quit provided for expressly or impliedly by the Agreement of tenancy, the conduct of the tenant and absence of breach of termination (condition) to tenancy on his part are irrelevant factors. This is the position in the Transfer of Property Act. The court must bear in mind that the concept of termination of tenancy on account of forfeiture and the concept of termination of tenancy by a Notice to quit under Section 106 of the Transfer of Property Act, are two distinct and independent concepts.

113. In the case of Ram Bali Pandey Pandey (Since Deceased) Through His Legal Representatives vs. II Additional Judge, Kanpur and Ors., 1998 (2) ARC 362, Single Judge of this Court observed that the tenant cannot claim any relief from eviction by depositing the rent where *it was not a case of forfeiture of tenancy for non-payment of rent, but simplicitor termination of tenancy under Section 106 of the Transfer of Property Act*. Once determination of tenancy is by exercising power under Clause (h) of Section 111 of the Transfer of Property Act, by giving Notice under Section 106 of the Transfer of Property Act and not under Section 111(g) of the Transfer of



Property Act, then provision of Section 114 of the T.P. Act cannot be attracted.

114. Having discussed that the tenancy can be terminated under Section 111(h) of TPA by giving a Notice of termination under Section 106 of TPA, the question which thus, arises is whether a Notice of termination was served by the plaintiffs before filing of the present Suit.

III. Service of Notice under Section 106, Transfer of Property Act:

115. It is not denied that on the demise of Late Shri Manohar on 06.04.2017, disputes arose between the plaintiffs and the defendants and a Legal Notice dated 10.06.2019 was served upon the occupants of ground floor, first floor and the second floor of the suit property viz., defendant No. 5/Malvika Pillai, defendant No. 6/Narender Bajaj and the defendant No. 7/Alok Brara respectively thereby seeking Show-Cause from them as to how they are claiming residence at the suit property.

116. Again, the Legal Notice dated 17.07.2019 had been served by the plaintiffs on the defendant No. 4/Sudhir Kamath and defendant No. 5/Malvika Pillai, wherein it was stated that the defendant No. 4/Sudhir Kamath and defendant No. 5/Malvika Pillai had responded to the Legal Notice dated 10.06.2019 *vide* E-mail dated 20.06.2019, and had sought time to provide the Lease Deed dated 02.09.2016, for lease of the premises between 20.09.2016 and 30.09.2018 and the Lease Deed dated 20.09.2018, providing for extension of lease period from 01.10.2018 to 30.09.2020.

117. It was further stated in the legal Notice that despite undertaking to provide the Lease Deeds, the defendant No. 4/Sudhir Kamath and defendant No. 5/Malvika Pillai have failed to provide the copies of the said Lease



Deeds, though a final opportunity was given to them to provide the copies of the said Lease Deed within three days. It was also stated that in case the Noticee fails to respond, the legal action shall be initiated against them.

118. A similar Legal Notice dated 17.07.2019 was served upon the defendant Nos. 1 and 3 by the plaintiffs, wherein it was asserted that the defendant Nos. 1 and 3 have continued to receive and enjoyed the suit premises and taken the rent from the occupants of ground floor, first floor and the second floor of the suit property viz., defendant No. 5/Malvika Pillai, defendant No. 6/Narender Bajaj and the defendant No. 7/Alok Brara respectively. The plaintiffs, thus sought the copies of all the Lease Deeds and also the Statement of Accounts.

119. In the said Legal Notice, it was specifically stated that the tenancy was extended for a period of two years, from 15.05.2013 to 14.05.2015 by Late Shri Manohar vide his Letter dated 15.05.2013 addressed to the British Council Division India by giving his no objection for the suit property to be leased. After vacation of the suit property by the British Council Division India, the defendant Nos. 1 and 3 have failed to intimate the plaintiffs about the leasing of tenancy right to any third party. It was also stated that the plaintiffs, from their reliable sources, have come to know that the suit property was occupied by the third party viz., ground floor, first floor and the second floor of the suit property are occupied by defendant No. 5/ Malvika Pillai, defendant No. 6/Narender Bajaj and the defendant No. 7/ Alok Brara respectively. It was further stated that in case the Noticee fails to respond, the legal action shall be initiated against them.

120. The various Notices as mentioned above which were served to all the defendants (*including sub-tenants*) reveal that the defendants were asked to



comply with the Notices and furnish the requisite Lease Deeds or else legal action would be initiated against them. The Notices have not been complied nor have they come forth with any Lease Deed as requested.

121. In the case of Union Bank of India v. Sushila Goela and others, 2005 VIII AD (Delhi) 541, the Division Bench of this Court held that the object of a Notice under Section 106 of the Transfer of Property Act, 1872 is to inform the other party as to the intention of the person issuing the notice that he wants the premises back. Section 106 Transfer of Property Act, 1872 is not to be scrutinized by hair splitting precision. It is not a pleading but a mere communication of the intention to the recipient.

122. In Capital Book House v. Intercraft Limited, 1999 (51) DRJ 245 (DB), the Division Bench of this Court similarly, held that the idea of a Notice is only to communicate the intention of the owners and the object of the Notice is to be given sufficient time to vacate.

123. Even when no separate Notice under S.106 TPA is given, the Supreme Court in the case of Nopany Investments (P) Ltd. v. Santokh Singh (HUF), 2008 (2) SCC 728, has held that filing of suit is itself a Notice to quit, on the tenant. It was observed that no prior Notice under Section 106 of the Transfer of Property Act is necessary to enable the landlord to get the decree of possession.

124. Thus, even though the Lease Deed dated 1.10.2013 which was extended by 10 years i.e. till 2023, in favour of defendants No.1 to 3 was still subsisting on the date of filing of the present suit on 19th November 2019, the plaintiffs determined the tenancy under S. 111(h) of TPA by serving Notices on all the defendants (Defendant No1 to 3 being the tenants and defendant No. 4 to 7 being the subtenants) conveying its intention to



initiate legal action against them. Further, filing of the present Suit and the summons being served therein, is sufficient Notice to convey the intention of the plaintiff and enable them to get the decree of possession against the defendants.

125. After the service of Notice i.e. the summons served therein, the defendants No.1 to 3 became unauthorised occupants of the Suit property and are liable to eviction.

126. It is pertinent to note that the Lease Deed was executed by Rajendra acting on behalf of Shri Manohar. Upon the demise of Shri Manohar on 06.04.2017, the GPA, being revocable in nature, got terminated and thus, the right of Shri Rajendra to collect the rent of the property thereafter, also got terminated. The rent therefore, became due and payable to the plaintiffs after the demise of Sh. Manohar on 06.04.2017.

Status Of Defendants No.4 to 7/ Legal Sub-tenants:

127. Having observed that tenancy of defendant No.3 and of defendant No.1 and 2 who are partners of defendant No.3 stands terminated by way of forfeiture as well as by Notice under Section 106 of the Transfer of Property Act, 1882, the next question which arises is what is the status of defendant No.4 to 7 who are the lawful sub-tenants tenants in the suit premises.

128. In the case of Anand Nivas (Pvt.) Ltd. vs. Anandji Kalyanji Pedhi (1964) 4 SCR 892 it was observed by the Supreme Court that where the interest of a tenant in any premises is determined for any reason, the sub-tenant who has been inducted lawfully in the suit premises, shall be deemed to become a tenant of the landlord on the same terms and condition as would have held from the tenant if the tenancy had continued.

129. The Apex Court in the case of Hiralal Vallabhram vs. Kastorbhai



Lalbhai & Ors. 1967 SCC OnLine SC 273 made a reference to the case of Anand Nivas (supra) and observed that on determination of tenancy of a tenant, if there is a sub-tenant, he becomes the tenant of the landlord on the same terms and conditions. It has been further explained that under the Transfer of Property Act, the determination of tenancy by giving a Notice under Section 111(h) of Transfer of Property Act, the tenancy stands terminated. Though for the purpose of Rent Act, even if contractual tenancy is terminated, the tenancy still continues as a statutory tenant and sub-tenant enjoys the protection of the Rent Act till the landlord is able to establish any of the grounds of eviction specified therein.

130. It is evident from these judgment that once the tenancy of a contractual tenant is terminated under the provisions of Transfer of Property Act whether by forfeiture or by giving a Notice of Termination, he is under a bounden duty to vacate the premises. It is not a tenancy which is protected under the Delhi Rent Control Act and therefore, the sub-tenants are also liable for eviction. If he fails to hand over the possession, he becomes a trespasser who is liable to pay the user and occupation charges/ mesne profits for his continued occupation of the rented premises.

131. In the present case as well, once the tenancy of the defendant No.1 to 3 got terminated by virtue of the Notice of Termination/forfeiture, they became unauthorized occupants and defendant No.4 to 7 who are the legal sub-tenants become the tenants of the plaintiff directly.

132. In the case of Anandram Chandanmal Munot and Anr. Vs. Bansilal Chunilal Kabra (since deceased) through LRs and Ors. (2000) 1 Supreme Court Cases 10, similar situation was considered by the Apex Court. A reference was made to the judgment by Bombay High Court in Mangharam



Chbarmal vs. B.C. Patel (1970) 73 Bom. LR 140, wherein it was observed that a landlord has no privity of contract with the sub-tenants of his tenant. The sub-tenants are answerable for performing the various conditions of sub-tenancy only to the tenant who is their landlord for the time being. *However, once the tenancy of the tenant is determined, then the sub-tenants become the lawful tenants of the landlord.* It was further observed that if the eviction of the tenant is sought on the grounds personal to him then the landlord would also have to plead and prove the grounds of eviction against the lawful sub-tenants as well to be able to seek the eviction. The sub-tenants would have a right to defend their rights of occupation of the suit premises. It was further observed that the law does not imply that only after the tenant has been evicted that he would be compelled to file the suit afresh against the sub-tenants to seek possession. Once the tenancy of the tenant is terminated, then the sub-tenants can be arrayed in the same suit to seek their eviction, if the grounds are made out in accordance with law.

133. In the present case as well the defendant No.4 to 7 are the lawful tenants of defendant No.1 to 3. Once the tenancy of defendant No.1 to 3 got terminated by service of legal Notices as referred above, they became unauthorized occupants and ceased to be tenants under the Transfer of Property Act. Consequently, defendant No.4 to 7 who were the lawful sub-tenants, became the direct tenants under the plaintiffs/owner landlords. The Notice of Termination have also been served upon defendant No.4 to 7, who also, therefore, become unauthorized occupants after the service of Notice of Termination. The present suit for possession is, therefore, maintainable against all the defendants, who are liable to be evicted.

Recovery of Mense Profits and rendition of Accounts:



134. The defendants were only permitted by Shri Manohar to enjoy the premises and pay rent to Sh. Rajinder vide the GPA and Letter, which ended upon the demise of Shri Manohar in 2017. The defendants are thus, liable to pay Mesne profits to the plaintiffs for loss of rent from the date of demise of Sh. Manohar i.e. 06.04.2017 till the date of recovery of possession of the suit property. It is further noted that the defendants are liable to render the Accounts.

Relief:

135. The present application under *Order XII Rule 6* CPC, filed on behalf of the applicants/plaintiffs to seek judgment for possession based on admissions, is hereby allowed. The defendants are held to be unauthorised occupants of the Suit property since 2017 from the date of demise of Sh. Manohar. The defendants are hereby, directed to hand over possession of the Suit property to the plaintiffs within three months failing which the plaintiff shall be entitled to recover possession by filing an Execution.

136. Decree Sheet of possession be accordingly, prepared.

CS(OS) No. 600/2019

137. List on 12.08.2024 for Rendition of Accounts and Mesne Profits for the period from the date of demise of Sh. Manohar till recovery of possession.

**(NEENA BANSAL KRISHNA)
JUDGE**

JUNE 28, 2024/s.Sharma