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

% *Judgment Reserved on : August 03, 2015*
Judgment Delivered on : August 12, 2015

\+ **RFA (OS) 43/2015**

ICICI BANK LIMITED .....Appellant
Represented by: Mr.A.S.Chandhiok, Sr.Advocate instructed by Mr.E.R.Parekh, Mr.Abhinay Kumar, Ms.Sweta Kakkad, Ms.Yamini Khurana and Mr.Chaitanya Kaushik, Advocates

versus

LATE SMT SHAKUNTLA GUPTA
(SINCE DECEASED) REPRESENTED
THROUGH : LRS .....Respondents
Represented by: Mr.Sanjiv Bahl, Advocate with Mr.Eklavya Bahl, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE V.KAMESWAR RAO

PRADEEP NANDRAJOG, J.

1. As the owner of 2955 square feet built up area on the ground and mezzanine floor forming part of property bearing No.82, Janpath, on October 01, 2008 Late Ms.Shakuntala Gupta (the mother of the respondents) executed a lease-deed in respect of the property. The lessee was the Bank of Rajasthan, authorized representative whereof was the co-signatory to the lease-deed. The lease-deed was duly registered and the duration of the lease was 15 years with rent to be increased every 5 years by 20%. Being relevant to deal with the arguments advanced by the

learned Senior Counsel for the appellant and its rebuttal thereto by the learned counsel for the respondents, we need to note the description of the parties to the lease-deed and clauses 3, 10 and 26 thereof. They read as under:-

"LEASE DEED

This indenture of lease is made at New Delhi on this 1st day of October, 2008.

BY AND BETWEEN

Mrs.Shakuntala Gupta, W/o Mr.Mahendra Kumar Gupta and R/o Shanti Niwas, 6, Under Hill Road, Civil Lines, Delhi – 110054 acting through her husband and duly constituted attorney namely, Mr.Mahender Kumar Gupta, S/o Late Shri Matu Ram, R/o Shanti Niwas, 6, Under Hill Road, Civil Lines, Delhi – 110054 vide registered General Power of Attorney dated 18.09.2008, bearing Registration No.4525 in Additional Book No.4, Volume No.2548 on Pages 138 to 141, registered on 18.09.2008 with the office of the concerned Sub-Registrar-I, Kashmere Gate, Delhi (hereinafter called the first party or the party of the first part, "LESSOR") (which expression shall unless it be repugnant to the context of meaning thereof, be deemed to mean and include her legal heirs, executors, administrators, legal representatives, successors and assignees) of the First Part

AND

***The Bank of Rajasthan Limited**, Central Office Jaipur, being a banking company under Section 5(c) of the Banking Companies Regulation Act, having its registered office at Clock Tower, Udaipur, Rajasthan (hereinafter called the second party or the party of the second part, "LESSEE") (which expression shall unless it be repugnant to the context of meaning thereof, be deemed to mean and include its successors and permitted assigns) through its Attorney, Mr.Harchand Hirwani, Senior Manager, The Bank of Rajasthan Ltd., 82, Janpath, New Delhi of the Other Part.*

x x x x

3. That this lease cannot be terminated by the Lessor before the end of the specified lease period of fifteen years expiring on 31.05.2023 in whatsoever manner. After expiry of 15 years, i.e. 31.05.2023 both the parties may agree to extend/renew the lease on mutually agreed terms. The lessee will have the option to cancel the remaining portion of the lease only by serving three month's notice upon the lessors or upon payment of rent equal of said three month's period to the lessors.

x x x x

10. The Lessee shall not sublet, assign, transfer or part with in favour of anyone either in part or whole, of the Demised Premises, without the prior consent of the Lessor in writing.

x x x x

26. In the event of non-payment of the dues by the lessee strictly as per the agreed time schedule, the lessor shall also have the right to recover the due amounts through a Court of law at the risk and cost of the lessee which would be in addition to the lessor's right of termination and recovery of possession forthwith and damages from the lessee."

2. Late Smt.Shakuntala Gupta filed CS (OS) No.874/2011 pleading therein that the Bank of Rajasthan Ltd. had sublet, assigned and parted with the possession of the leased premises to ICICI Bank Ltd. It was pleaded that Bank of Rajasthan had stopped paying rent since January, 2011. She pleaded that she did not receive the rent tendered by ICICI Bank Ltd. because said bank had no relationship with her. She pleaded that by a notice dated February 01, 2011 she called upon the Bank of Rajasthan Ltd. and ICICI Bank Ltd. to vacate the tenanted premises and since there was a failure to vacate the tenanted premises she was

constrained to sue for possession as also recovery of damages for the period post the possession became unauthorized as per her.

3. In the written statement filed by ICICI Bank, the averments made in the plaint regarding letting of the premises to the Bank of Rajasthan Ltd. at an initial rent of ₹7,61,500/- per month was admitted. The terms of the lease-deed dated October 01, 2008 were admitted. It was pleaded that under a scheme of amalgamation which was duly approved by the Reserve Bank of India, the Bank of Rajasthan Ltd. merged with ICICI Bank Ltd. It was pleaded that in this manner ICICI Bank Ltd. became the successor of the Bank of Rajasthan Ltd. Relying upon the lease-deed dated October 01, 2008, wherein the lessor and the lessee were described, it was highlighted that describing the Bank of Rajasthan Ltd. as the lessee it was made clear that the expression '*lessee'* shall be deemed to mean and include its successors and permitted assigns. It was pleaded that the amalgamation had a statutory and legislative character (and by this plea we understand that the intention was to plead that the amalgamation was statutory). It was pleaded, assuming that clause 10 of the lease-deed was violated, it did not entitle Shakuntala Devi to terminate the lease because the clause does not stipulate that on breach of said condition Shakuntala Devi had a right to terminate the lease. It was pleaded that the amalgamation of the Bank of Rajasthan Ltd. with ICICI Bank Ltd. was with the approval of the Reserve Bank of India and therefrom the legal argument was advanced that the merger of Bank of Rajasthan Ltd. with ICICI Bank Ltd. was the consequence of law and thus there was no assignment of the tenancy right.

4. Since concededly the suit property is not governed by the Delhi Rent Control Act, 1957 and therefore the maintainability of the suit before a civil Court was not in doubt, the facts being admitted; only legal

issues arising for consideration, the learned Single Judge proceeded to settle two issues and proceeded to decide whether without any trial the claim could be decreed. The two issues settled read as under:-

> *"1. Whether as per the Lease Deed dated 01.01.2008, the word "lessee" includes its successors and permitted assigns? If so, its effect? OPD*
>
> *2. Whether the amalgamation of the defendant No.1 with the defendant No.2/Bank would amount to sub-letting of the suit premises so as to entitle the plaintiff to a decree of possession prayer for by the plaintiff? OPP"*

5. It is apparent that the appellant did not press any argument with respect to its pleadings in the written statement regarding the plea that assuming clause 10 of the lease-deed was violated it did not entitle Shakuntala Devi to terminate the lease.

6. Deciding both issues together the learned Single Judge held that in view of the decision of a Division Bench of this Court dated March 14, 2014, deciding RFA (OS) No.319/2005 *Standard Chartered Grandlays Bank Vs. Raghubir Saran Charitable Trust*, wherein a similarly worded lease-deed was interpreted as prohibiting the assignment of the tenancy rights without the prior consent of the landlord, it has to be held that there was an assignment of the tenancy rights without the prior permission of the landlord; and that in view of the decision of the Supreme Court reported as (2004) 7 SCC 1 *Singer India Ltd. Vs. Chander Mohan Chaddha & Ors.* which was followed by the Division Bench of this Court in *Raghubir Saran*'s case (supra), it was a case of assignment of the tenancy rights. The learned Single Judge has noted Section 44A of the Banking Regulation Act, 1949 and has juxtaposed said Section with Section 45 of the Banking Regulation Act, 1949 to bring home the point that amalgamation of banking companies under Section 44A of the Act

was voluntary as distinct from amalgamations effected under Section 45 of the Act.

7. We proceed to deal with the challenge to the impugned decision with reference to the two issues which were settled by the learned Single Judge and were decided by the impugned decision and thereafter would note and decide two more contention which was advanced in the appeal before us.

8. As noted in paragraph 1 above, in the lease-deed the lessee has been described as including its successors and permitted assigns. Therefrom it was urged that under the lease-deed assignment was recognized.

9. In paragraph 1 above we have reproduced clause 10 of the lease-deed executed by the parties and would simply highlight that it is a term of the lease that the lessee shall not sub-let, assign, transfer or part with in favour of anyone either in part or whole the demised premises without the prior consent of the lessor in writing. Similar was the description of the lessee in the lease-deed which was considered by the Division Bench of this Court in ***Raghubir Saran***'s case and similar was the language of a term of the lease. The Division Bench held that the express clause in the lease-deed prohibiting sub-letting and assignment would require the lease-deed in question to be interpreted as one which prohibits assignment and sub-letting. It being customary for the lawyers to describe lessor and lessee as inclusive of heirs and assigns, the Division Bench observed as under:-

> *"15. It happens in life that where the thought of an author of a document is given ink by a draftsman, the mundane expression in the mind of the draftsman gets insidiously reflected in the draft prepared. This has happened in the instant case. It is the usual practice of lawyers, while referring to the lessor and the*

lessee, while describing the two, to mechanically record in the recitals that the expression 'lessor' and the 'lessee' shall include their successors and assigns; overlooking that where a lease-deed prohibits an assignment, such description of the 'lessee' would be inappropriate."

10. We concur with the interpretation put on the lease-deed in question by the learned Single Judge that it prohibits sub-letting/assignment without the prior written consent of the lessor.

11. On the issue whether on amalgamation when ICICI Bank Ltd. took over the interest, rights and liabilities of the Bank of Rajasthan Ltd. did an assignment of the tenanted premises take place, argument of learned Senior Counsel for the appellant was that Section 44A of the Banking Regulation Act, 1949 commenced with a non-obstante clause, meaning thereby, that the principles of amalgamation under Section 391 and Section 394 of the Companies Act would not be attracted because amalgamation under said provisions is by consent. Learned senior counsel argued that amalgamation of banking companies was taken outside the purview of the Companies Act because of the wide ranging ramification and the legislature in its wisdom vested exclusive jurisdiction with the Reserve Bank of India. Therefrom learned senior counsel sought to urge that amalgamation of banking companies has to be viewed differently.

12. As noted above, the learned Single Judge has noted the language of Section 44A and Section 45 of the Banking Regulation Act, 1949 to conclude that amalgamations under Section 44 A are voluntary and hence would be akin to amalgamations under Section 391 and Section 394 of the Companies Act and that amalgamation under Section 45 being non voluntary stand on a different footing, and on said reasoning we note that the learned Single Judge has distinguished decisions where amalgamation

was non consensual and were the result of a suo moto decision taken by the Reserve Bank of India and for which the Central Government issued the necessary notification.

13. Section 44A and Section 45 of the Banking Regulations Act, 1949 read as under:-

> *"**44A. Procedure for amalgamation of banking companies***
>
> *(1) Notwithstanding anything contained in any law for the time being in force, no banking company shall be amalgamated with another banking company, unless a scheme containing the terms of such amalgamation has been placed in draft before the shareholders of each of the banking companies concerned separately, and approved by a resolution passed by a majority in number representing two-thirds in value of the shareholders of each of the said companies, present either in person or by proxy at a meeting called for the purpose.*
>
> *(2) Notice of every such meeting as is referred to in sub-section (1) shall be given to every shareholder of each of the banking companies concerned in accordance with the relevant articles of association indicating the time, place and object of the meeting, and shall also be published atleast once a week for three consecutive weeks in not less than two newspapers which circulate in the locality or localities where the registered offices of the banking companies concerned are situated, one of such newspapers being in a language commonly understood in the locality or localities.*
>
> *(3) Any shareholder, who has voted against the scheme of amalgamation at the meeting or has given notice in writing at or prior to the meeting of the company concerned or to the presiding officer of the meeting that he dissents from the scheme of amalgamation, shall be entitled, in the event of the scheme being sanctioned by the Reserve Bank, to claim from the banking company concerned, in respect of the shares held by him in that company, their value as determined by the Reserve Bank when sanctioning the scheme and such*

determination by the Reserve Bank as to the value of the shares to be paid to the dissenting shareholder shall be final for all purposes.

(4) If the scheme of amalgamation is approved by the requisite majority of shareholders in accordance with the provisions of this section, it shall be submitted to the Reserve Bank for sanction and shall, if sanctioned by the Reserve Bank by an order in writing passed in this behalf, be binding on the banking companies concerned and also on all the shareholders thereof.

[***]

(6) On the sanctioning of a scheme of amalgamation by the Reserve Bank, the property of the amalgamated banking company shall, by virtue of the order of sanction, be transferred to and vest in, and the liabilities of the said company shall, by virtue of the said order be transferred to, and become the liabilities of, the banking company which under the scheme of amalgamation is to acquire the business of the amalgamated banking company, subject in all cases to the provisions of the scheme as sanctioned.

*45. **Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution of amalgamation**.*

(1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or any agreement or other instrument, for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking company.

(2) The Central Government, after considering the application made by the Reserve Bank under sub-section (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time

extend the period so however that the total period of moratorium shall not exceed six months.

(3) Except as otherwise provided by any directions given by the Central Government in the order made by it under sub-section (2) or at any time thereafter the banking company shall not during the period of moratorium make any payment to any depositors or discharge any liabilities or obligations to any other creditors.

(4) During the period of moratorium, if the Reserve Bank is satisfied that—

(a) in the public interest; or

(b) in the interests of the depositors; or

(c) in order to secure the proper management of the banking company; or

(d) in the interests of the banking system of the country as a whole, it is necessary so to do, the Reserve Bank may prepare a scheme—

(i) for the reconstruction of the banking company, or

(ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank").

(5) xxxxxxxx"

14. The learned Single Judge is ex-facie correct that amalgamations under Section 44A are voluntary and are therefore different in character vis-à-vis amalgamations under Section 45 of the Banking Regulation Act, 1949. The effect of the non-obstante clause in Section 44A of the Act is simply to take away the jurisdiction of amalgamation pertaining to banking companies from under the Companies Act, and no more. It has nothing to do with the consensual nature of the amalgamation. It simply

means that issues of amalgamation pertaining to banking companies shall not be adjudication under the Companies Act. The forum would be the Reserve Bank of India. Thus, consequences of amalgamation, as interpreted, when the amalgamation takes place under the Companies Act would be fully applicable to amalgamation of banking companies where the decision to amalgamate is consensual.

15. In ***Singer***'s case (supra) it was held that the result of amalgamation of M/s.Singer Sewing Machine Company, incorporated under the laws of the State of New Jersey into Indian Sewing Machine Company, a company incorporated under the laws in India, was the assignment of its lease-hold premises. The name of Indian Sewing Machine Company was later on changed to Singer India Ltd. In the said decision, while noting the arguments of Singer the Supreme Court noted that the appellant therein had cited a decision of a learned Single Judge of this Court reported as (1983) 53 Comp. Cases 926 (Del.) ***Telesound India Ltd. in re***.

16. Argument advanced by Sh.Amarjeet Singh Chandhiok, learned Senior Counsel for the appellant was that though the Supreme Court had noted that the decision in ***Telesound***'s case was cited, but had not considered the ratio thereof; and by the argument advanced we understand that the unsaid part of the argument was that the Supreme Court had not dealt with the reasons given by the learned Single Judge of this Court in ***Telesound***'s case and thus the Division Bench should deal with the same.

17. Telesound, the transferor company, was a tenant of a commercial premises in South Extension, Part I, New Delhi and the landlord was one M.L.Sondhi. Dalmia Cement Bharat Ltd. was the transferee company and under the scheme of amalgamation of the transferor company with the transferee company, all the assets and liabilities were to be

transferred. The scheme envisaged the number of shares to be given to the members of the transferor company by the transferee company. The landlord Sh.M.L.Sondhi filed objections to the scheme and claimed locus on the plea that since as a result of amalgamation the premises given on rent by him to the transferor company would be assigned to the transferee company and for which he had given no consent, the transfer would be illegal. Pointing out to the Court that the premises were protected under the applicable Rent Control Law which contained a provision empowering a landlord to evict the tenant if the tenant transferred, parted with possession or assigned, without the consent of the landlord, the tenanted premises, he opposed the scheme. In paragraph 11 of the decision, the learned Single Judge noted the questions which would arise with reference to the impact of a scheme of amalgamation on the rights and obligations of the landlord and the tenant. We reproduce therefore paragraph 11 of the decision. It reads as under:-

> *"11. What, if any, is the impact of a scheme of amalgamation on the rights and obligations of the landlord and the tenant, qua the property held by the transferor-company under a contract of lease, which it may continue to occupy by virtue of the protection against eviction available to it under. 14 of the Rent Control Act, is the next question that is posed on behalf of the landlord of the commercial premises in which are house the registered office and the commercial offices of the transferor-company. This question raises a number of subsidiary legal problems. Are the tenancy rights of the transferor-company "property" within the meaning of Section 394(4)(a) of the Act and, Therefore, capable of being transferred to the transferee-company on amalgamation ? Does such a transfer tantamount in law to an assignment of the tenancy by or on behalf of the company, or amount to parting with possession, etc., and would, Therefore, be within the mischief of Section 14(1)(b) of the Rent Control Act? If it is tantamount to an assignment, etc., would it be valid notwithstanding that the consent of the*

landlord has not been obtained? Would such an assignment, etc., constitute an offence under Section 48(2) of the Rent Control Act? Would the court in such circumstances sanction an amalgamation or give effect to such a transfer? If the amalgamation is to be sanctioned, what directions would be necessary to protect the interest of the landlord, who, on amalgamation, would be compelled to deal with the transferee-company? Whether the vesting of the assets of the transferor-company in the transferee-company on amalgamation is an act of the transferor company or has the statutory genesis and, therefore, a vesting by an operation of law? How far is such vesting distinguishable from vesting in the trustee in bankruptcy, transfer by the official liquidator in winding-up, and transfer by a tenant to a partnership composed of himself and another? If the dissolution of the company without being wound up as a consequence of amalgamation is analogous to the death of a natural person involving succession to the estate and the effect of such succession on the statutory tenancy? These are some of the subsidiary questions that arise for consideration."

18. The learned Single Judge thereafter discussed as to what is the legal position when a company is amalgamated with another company and highlighted that though the origin may be a consent between the members of two companies, but held that since the absorption has to be brought about by virtue of a statutory instrument, a bilateral arrangement by a common endeavour was capable of being distinguished with an absorption which was brought about by virtue of a statutory instrument. The learned Single Judge also discussed as to what would be the property rights and liabilities keeping in view Section 394 of the Companies Act. This discussion is to be found in paragraph 12 of the decision of the learned Single Judge and the relevant parts thereof would read as under:-

"12. Amalgamation of a company with another or an amalgamation of two companies to form a third is brought about by two parallel schemes of arrangements entered into between one company and its members and the other company

and its members and the two separate arrangements bind all the members of the companies and the companies when sanctioned by the court. Amalgamation is, Therefore, an absorption of one company into another or merger of both to form a third, which is not a mere act of the two companies or their members but is brought about by virtue of a statutory instrument and to that extent has statutory genesis and character, and to that extent it is distinguishable from a mere bilateral arrangement to merge or join in a common endeavour, an undertaking or enterprise (1969) 2 SCR 866 J.K.(Bombay) P.Ltd. Vs. New Kaiser-i-Hind Spg. & Wvg. Co.Ltd. Once the court sanctions the amalgamation, the amalgamation is made effective and binding by virtue of statutory power, inter alia, by the transferor to the transferee-company of the whole or any part of the undertaking, property rights and liabilities of the transferor-company by virtue of the provisions of Section 394 of the Act, which are intended to facilitate the process of amalgamation : Sailendra Kumar Ray v. Bank of Calcutta Ltd. (1948) 18 Comp Cas 1 (Cal).

x x x x

The expression "property" would, therefore, be wide enough to include rights under a contract, including a contract of tenancy. These are co-extensive with the property and right which the transferor-company has in relation to its assets, but could not be wider than what the transferor-company was entitled to enjoy. The rights, property, as indeed the liabilities of the transferor-company, become the rights, property and liabilities of the transferee-company by virtue of the order of vesting made by the court consequent on amalgamation. It is neither an assignment of right or property, nor an assignment of property by the company. It is the transfer of rights, property and liabilities along with the company itself and it is only as a result of confusion of thought that it could be described as an assignment by the company to another person, which is independent and distinct from the company. Such a notion ignores the peculiar position of amalgamation in company law and its true legal incident. It is for historical reasons that the device of amalgamation was built into the company law for facilitating the merger of companies, inter alia, with a view to help restoration of sick units to health, better, more effective

and economical management of the corporate sector to ensure continued production, increased employment avenues and generation of revenues. Section 72A of the I.T. Act is one of the incentives for this kind of absorption of one company into another. On amalgamation the transferor-company merges into the transferee-company shedding its corporate shell, but for all purposes remaining alive and thriving as part of the larger whole. In that sense the transferor-company does not die either on amalgamation or on dissolution without winding-up under sub-section (1) of Section 394. It is not wound up because it has merged into another. Winding-up is unnecessary. It is dissolved not because it has died, or ceased to exist, but because for all practical purposes, it has merged into another forming part of one corporate shell. The dissolution is the death of its independent corporate shell, because a company cannot have two shells. It is, therefore, dissolved because the independent shell or corporate name is superfluous. The company in its essence means its members, who compose it, the assets, property and rights that it had, its liabilities, its undertaking, business or other activity. It is not synonymous with the shell or name. On amalgamation and consequential dissolution all these attributes continue to live as part of a larger entity. The only part that dies is the shell and the name."

19. The observations made by the learned Single Judge in paragraph 12 to the effect that the transferor company is dissolved and has not died and the concept of the shell of a company vis-à-vis its existence otherwise in the words of the learned Single Judge : '*On amalgamation the transferor-company merges into the transferee-company shedding its corporate shell, but for all purposes remaining alive and thriving as part of the larger whole. In that sense the transferor-company does not die either on amalgamation or on dissolution without winding-up under sub-section (1) of Section 394. It is not wound up because it has merged into another. Winding-up is unnecessary. It is dissolved not because it has died, or ceased to exist, but because for all practical purposes, it has merged into another forming part of one corporate shell. The dissolution is the death*

of its independent corporate shell, because a company cannot have two shells. It is, therefore, dissolved because the independent shell or corporate name is superfluous. The company in its essence means its members, who compose it, the assets, property and rights that it had, its liabilities, its undertaking, business or other activity', in paragraph 12, have to be understood in light of the questions framed by the learned Single Judge to answer that M.L.Sondhi had no locus standi to challenge the scheme of amalgamation, and that the right to participate in the scheme was that of the members of the two companies and its creditors. The learned Single Judge noted that as per the scheme the landlord was unaffected because the scheme envisaged payment of full rent, past, present and future to the landlord.

20. The learned Single Judge lodged a caveat in paragraph 16 of his opinion, that the Court was not concerned at that stage with the right of the landlord to sue for ejectment invoking Section 14(1)(b) of the Delhi Rent Control Act, 1957 which gave a right to a landlord to seek ejectment of a tenant who sub-lets, assigns or parts possession with the tenanted premises. We therefore reproduce paragraph 16 of the decision of the learned Single Judge. It reads as under:-

> *"16. It is, however, unnecessary for the present purpose to carry the matter any further. Prima facie, the rights of the transferor-company in the tenancy, contractual or statutory, are transferable on an amalgamation by virtue of the vesting order to be made by the court while sanctioning the scheme of amalgamation or thereafter and having regard to the nature of such a vesting it would not require the consent of the landlord and would be outside the mischief of the provisions of Section 14(1)(b) of the Rent Control Act. This court is, however, not concerned at this stage if the transfer by or consequent on amalgamation by the order of the court would nevertheless be tantamount to the assignment of a tenancy and if without the*

consent of the landlord would render the company or the transferee-company liable to eviction under Section 14(1)(b) of the Rent Control Act or otherwise be actionable in a regular civil action against them. Such a matter has to be examined and decided in accordance with the special jurisdiction created by that Act or on a regular civil action, if maintainable. No cause of action accrues to the landlord before the amalgamation and consequential vesting. The cause of action, if any, follows the amalgamation and the vesting. Neither the amalgamation nor the vesting would deprive the landlord of any plea based on alleged assignment which may be open in law to the landlord. If there is any assignment in law, which may attract the provisions of the Delhi Rent Control Act, the landlord would be free to take recourse to the proceedings under that Act or in a regular civil action and such proceedings would be dealt with and decided by the appropriate authority in accordance with law."

21. It would be enough for us to highlight that the decision of the Supreme Court in ***Singer***'s case (supra) concerned the ejectment under Section 14(1)(b) of Delhi Rent Control Act, 1957 where as a result of amalgamation the tenanted premises held by the transferor company came to the transferee company, and the Supreme Court held that it would be a case of assignment and since the assignment, as in the instant case, was without the written consent of the landlord, it was held that Singer (transferee company) was liable for ejectment.

22. The two contentions advanced before the learned Single Judge having been dealt with by us and the conclusions arrived at by the learned Single Judge, being affirmed, we deal with the contention advanced that even if there was a violation of clause 10 of the lease-deed the lease could not be determined because a term of the lease was violated and not a condition thereof.

23. Inter-alia, of the various recitals, the last recital of the lease-deed reads as under:-

> *"Whereas the lessor upon assurance of the lessee that it shall strictly abide by the stipulations contained in this deed which are in accordance with the terms and conditions stipulated/agreed by the lessee vide its letter dated 17.07.2008 in response to offer letter dated 07.07.2007 of lessor and accepted by the lessor on 23.07.2008, the lessor has agreed to give on lease to the lessee the demised premises on the terms and the conditions herein."*

24. Thereafter the terms/conditions of the lease have been typed. It is thus apparent that whether we call it a term or anything else, clause 10 of the lease-deed, and for that matter all other clauses after the recitals, are not only the terms of the lease-deed but even conditions of the lease. It is trite that breach of a condition of a lease entitles the opposite party to terminate the lease, and where the breach is by the tenant, the landlord gets a right to terminate the lease.

25. The contention advanced with reference to clause 26 of the lease-deed was that parties expressly vested a right in the landlord to terminate the lease only on the condition of non-payment of rent. It was urged that therefrom it could be inferred that violation of any other term/condition of the lease the same could not be determined by the landlord.

26. Now, as we have already held hereinabove that the lease-deed has made all the terms of the lease as conditions of the lease and thus clause 10 prohibiting sub-letting or assignment without the written consent of the landlord would make it actionable if there is sub-letting or assignment. Clause 26 of the lease-deed is actually a surplus clause because the lease is subject to the condition of payment of rent and in law if rent is not paid two rights flow to the landlord. The first to recover the rent and the second to terminate the lease. It is open to the landlord to overlook the breach of the condition of the lease and hence not terminate the same but sue only for recovery of the rent. It is open to the landlord

to proceed to terminate the lease on account of non-payment of rent and proceed to recover possession and additionally claim damages for unauthorized use and occupation from the date the possession becomes unauthorized.

27. The appeal is accordingly dismissed with cost against the appellant and in favour of the respondents.

(PRADEEP NANDRAJOG)
JUDGE

(V.KAMESWAR RAO)
JUDGE

AUGUST 12, 2015
mamta