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

Reserved on: 08th October, 2025
Pronounced on: 15th December, 2025

\+ RFA 30/2015

SUNIL KUMAR JAIN & ANR. .....Appellants
Through: Mr. S.C. Singhal, Adv.
versus

RAM KISHAN TOKAS & ORS. .....Respondents
Through: Mr. Anupam Srivastava, Sr. Av. With Mr. Dhairya Gupta, Advs. for R-1
Mr. Rahul Sharma and Mr. Vikas Kumar, Advs for R-2 (Through VC)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

JUDGEMENT

BRIEF BACKGROUND:

1. The instant first appeal has been filed by the appellants/tenants (plaintiffs before the Trial Court) under Section 96 of the Code of Civil Procedure, 1908 ("CPC") against the judgment and decree dated 10th September, 2014, passed by the Additional District Judge-17 (Central), Tis Hazari Courts, Delhi in suit bearing *CS No. 398/2014*, titled as *Sunil Kumar Jain and Anr. Versus Ram Kishan Tokas and Anr.* ("impugned judgment").

2. The appellants had filed *CS No. 398/2014* seeking a decree towards recovery of firstly, possession of the Corner Shop measuring 15 X 9 sq. ft., situated in property bearing *No. E-108/2, Opposite Community Centre, BGN Market, Munirka Village, New Delhi* ("suit shop") and secondly, Rs. 1,00,000/- towards damages and compensation for the period from 01st July,

2004 to 30th November, 2004 from the respondents (defendants before the Trial Court). There was further prayer for decree of permanent injunction, restraining the respondents from parting away with possession of the suit shop or from creating any third-party interest therein.

3. The Trial Court, by way of the impugned judgment and decree dated 10th September, 2014, dismissed the suit of the appellants by holding that respondent no. 1 (defendant no. 1 before the Trial Court) had been able to prove that the suit instituted by the appellants/plaintiffs was without any cause of action and further, that the appellants/plaintiffs had been unable to prove by way of evidence the due execution of the alleged Undertaking dated 01st July, 2004.

4. This Court notes that the earlier respondent no. 2, i.e., Shri Mahender Singh (defendant no. 2 before the Trial Court), was deleted from the array of parties *vide* order dated 30th June, 2015, on account of his demise. Accordingly, an amended Memo of Parties dated 19th June, 2015 came to be filed. The position of the parties, as recorded in the said amended Memo of Parties, shall be referenced hereinafter in the present judgment.

5. Before adverting to the facts of the present appeal, it is noted that this Court, *vide* order dated 19th January, 2015, while issuing notice in the appeal, had directed the parties to maintain *status quo* with respect to the suit shop. The said interim order had subsequently been made absolute on 25th August, 2015.

RELEVANT FACTS:

6. The facts, relevant for adjudication of the present appeal, flowing from the impugned judgment and the evidence on record, are as follows:

Pre-Filing of Suit:

6.1. Tenancy was created in respect of the suit shop by way of a Rent Agreement dated 26th June, 2001 (*Ex. PW1/E*), whereby, respondent no.1 leased out the suit shop to the appellants at a monthly rent of Rs. 1,000/-, for an indefinite period, with effect from 26th June, 2001.

6.2. In terms of the Rent Agreement, appellants deposited Rs. 3.40 lakhs as security deposit with the respondent no. 1, wherein, Rs. 3.30 lakhs were deposited by way of a manager's cheque bearing No. 005172 dated 25th June, 2001, drawn on HDFC Bank (*Ex. PW1/B*) and Rs. 10,000/- was paid in cash, against which, respondent no. 1 had issued a receipt dated 18th June, 2001 (*Ex. PW1/D*). A receipt dated 25th June, 2001, marked as *Ex. PW1/C*, is also on record, acknowledging payment of entire amount of Rs. 3.40 lakhs from the appellants to respondent no. 1.

6.3. Thereafter, the appellants continued to be in possession of the suit shop from 26th June, 2001 and paid the requisite rent till June, 2004. Rent receipts of the relevant periods for the years 2001, 2002 and 2004 are on record as *Ex. PW1/I Colly*.

6.4. Around June, 2004, dispute arose between the appellants and respondent no. 1. It was the case of appellants before the Trial Court that in the second half of June, 2004, respondent no. 1 approached them with a proposal to vacate the suit shop on a temporary basis to renovate it, and an Undertaking dated 01st July, 2004, marked as *Ex. PW1/F*, was executed in this regard by respondent no. 1. In terms of the said Undertaking, respondent no. 1 undertook to return the possession of newly renovated suit shop within five months, i.e.,

before 30th November, 2004, on the same conditions as mentioned in the Rent Agreement dated 26th June, 2001. The Undertaking further recorded that respondent no. 1 would be liable for compensating appellants for the loss of business during the renovation period, at the monthly rate of Rs. 20,000/-. In contrast thereto, it was the plea of respondent no. 1 before the Trial Court that he had not executed the said Undertaking, *Ex. PW1/F*.

6.5. Subsequently, as per the appellants, respondent no. 1 refused to hand over possession of the suit shop, which constrained them to file a police complaint dated 18th December, 2004 (marked as *Ex. PW1/G*) and serve a Legal Notice of the same date upon respondent no. 1 (marked as *Ex. PW1/H Colly*). In response to the said Legal Notice, respondent no. 1 issued a reply dated 11th January, 2005 (marked as *Ex. PW1/J*), refuting the claims of appellants on the ground that they had willingly handed over possession of the suit shop after receiving back the security deposit of Rs. 3.40 lakhs from respondent no. 1.

6.6. Aggrieved by the non-delivery of possession of suit shop by respondent no. 1, appellants filed the suit bearing *CS No. 398/2014* for recovery of possession and compensation/damages, in terms of the Undertaking, *Ex. PW1/F*, against respondent no. 1.

Post-Filing of Suit:

6.7. The learned Trial Court, on 08th September, 2005, directed the parties to maintain *status quo qua* the suit shop in *CS No. 398/2014*. Further, upon submission of respondent no. 1 that he had already sold the suit shop to Shri Mahender Singh in October, 2004 *vide* a registered sale deed dated 26th October, 2004, said Shri Mahender Singh was

impleaded as defendant no. 2 in the suit on 14th November, 2005.

6.8. However, even though written statements came to be filed by both respondent no. 1/defendant no. 1 and Shri Mahender Singh/defendant no. 2, on account of non-appearance on behalf of Shri Mahender Singh, he was proceeded *ex-parte* on 10th October, 2006.

6.9. In terms of the submission of Shri Mahender Singh in his written statement that he had further sold the suit shop *vide* a registered sale deed dated 15th March, 2005 to one Shri Vijay Kumar Jha (respondent no. 2 before this Court), said Shri Vijay Kumar Jha was impleaded as defendant no. 3 before the Trial Court on 03rd October, 2008.

6.10. *Vide* order dated 24th February, 2009, the Trial Court struck off the defense of respondent no. 2/defendant no. 3 as no written statement was filed by him despite several opportunities.

6.11. Thereafter, based upon the pleadings of the parties, issues came to be framed on 01st June, 2006, as under:

> "*(i) Whether suit of the plaintiff is liable to be dismissed in view of the preliminary objections No. 1&2 of the W.S filed by defendant No. 1? OPD*
>
> *(ii) Whether suit of the plaintiff is liable to be dismissed on the ground of mis-joinder and non-joinder of parties? OPD*
>
> *(iii)Whether the suit of the plaintiff is liable to be dismissed in view of the preliminary objection No.4 of the W.S filed by defendant No. 1? OPD*
>
> *(iv) Whether plaintiff has filed the present suit on the basis of forged documents and plaintiff is liable to be prosecuted U/S 340 Cr.P.C? OPD*
>
> *(v) Whether suit of the plaintiff is liable to be dismissed as no cause of action ever arose against the defendants? OPD*
>
> *(vi) Whether plaintiff is entitled for a decree of possession of the shop situated in property No.E-108/2, BGN Market, Munirka Village, New Delhi? OPP*

(vii) Whether plaintiff is also entitled for a decree of permanent injunction as prayed in the plaint? OPP

(viii) Whether plaintiff is entitled for a decree for a sum of Rs.1,00,000/- alongwith damages and costs as prayed in the plaint? OPP

(ix)Relief."

6.12. Evidence was led by the parties, whereby, the appellants produced two witnesses – *PW1* (appellant no. 2/plaintiff no. 2) and *PW2* (appellant no. 1/plaintiff no. 1) and the respondent no. 1/defendant no. 1 testified as *DW1*. In total, seven (07) documents were exhibited before the Trial Court.

6.13. At this stage, it is relevant to note that the plaint was initially filed by the appellants bearing the title – *"Suit For Recovery of Possession (Restoration of Possession) Under Section 6 of Specific Relief Act, 1963 ....."*. However, at the time of final arguments in the year 2014, appellants moved an application urging the Trial Court to consider the suit as an ordinary suit based upon title, and not as a suit under Section 6 of the Specific Relief Act, 1963. The said application was disallowed by the Trial Court.

6.14. Consequently, the appellants approached this Court by way of *CM(M) 452/2014*, whereby, *vide* order dated 28th July, 2014, this Court directed the Trial Court to determine the suit of the appellants based upon the pleadings on record, evidence led and the issues framed.

6.15. Accordingly, the impugned judgment and decree dated 10th September, 2014 came to be passed, whereby, the Trial Court dismissed the suit of the appellants. Thus, the present appeal has been filed by the appellants/plaintiffs, seeking to set aside the impugned

judgment and decree and for grant of the prayers sought in *CS No. 398/2014*.

SUBMISSIONS OF THE PARTIES:

7. Before this Court, the appellants have raised the following contentions for seeking setting aside of the impugned judgment:

7.1. The Undertaking, *Ex. PW1/F*, had been signed by respondent no. 1 and was duly notarized. Therefore, dismissal of the suit by Trial Court on the ground that execution of *Ex. PW1/F* had not been proved, is untenable particularly, in view of respondent no. 1's admission that the signature on *Ex. PW1/F* was his own. No evidence has been produced by respondent no. 1 to indicate the contrary.

7.2. Once respondent no. 1 had admitted that *Ex. PW1/F* bore his signature, the onus to disprove the said document shifted onto him. However, no evidence has been led by respondent no. 1 in that regard.

7.3. The Trial Court has erred in not appreciating that had the signature of respondent no. 1 been obtained by appellants on blank papers for the purpose of filing Income Tax Returns ("ITR"), then why the respondent no. 1 has not produced any such record of ITR to show that such returns were filed by appellants. Thus, respondent no. 1 has failed to adduce any evidence to show that the stamp paper on which Undertaking being *Ex. PW1/F* was executed had been signed by him when it was blank.

7.4. When a document bears the signature of a party, it is always believed that it was duly signed after preparation of the document, unless contrary evidence is shown thereto.

7.5. Perusal of the stamp paper on which *Ex. PW1/F* is prepared would further show that the same had been purchased on 30th June, 2004, executed

on 01st July, 2004 and the Undertaking on it has been prepared in Hindi.

7.6. The Trial Court failed to appreciate that all the dealings with respect to the suit shop from the beginning itself had been by way of written instruments, i.e., written Rent Agreement, receipt of deposit of security amount, rent receipts, etc., and accordingly, it could not have been believed by the Trial Court that appellants would have surrendered the tenancy without executing anything in writing and by receiving the security deposit back in cash, which had initially been paid by way of a cheque.

7.7. It is Trial Court's own finding that respondent no. 1 had not established the return of security deposit by payment of Rs. 2 lakhs in cash and Rs. 1.5 lakhs by way of cheque to Shri Manoj Jain, as respondent no. 1 had neither produced any evidence to prove the cash transaction, nor had he examined said Shri Manoj Jain. Thus, this finding of the Trial Court is in itself sufficient to grant a decree of possession of suit shop to appellants, as a tenant is always a tenant, unless it is evicted through due process of law.

7.8. Respondent no. 1 has played a fraud upon the appellants by firstly executing the Undertaking, *Ex. PW1/F*, then taking over the possession of suit shop and further, usurping the securing amount of Rs. 3.40 lakhs as well.

8. *Per contra*, the submissions put forth by respondent no. 1 are as follows:

8.1. It is an undisputed fact that the Rent Agreement dated 26th June, 2001, i.e., *Ex. PW1/E*, was executed by and between the parties and respondent no. 1 had handed over the possession of suit shop to the appellants pursuant thereto. It is also undisputed that the appellants had subsequently surrendered possession of suit shop to respondent no. 1.

8.2. The entire case of appellants for recovery of possession of tenanted suit shop hinged upon enforceability of the Undertaking, *Ex. PW1/F*, based upon the terms of which, they claim that they had surrendered possession of the suit shop. However, as rightly concluded by the Trial Court, the appellants have failed to prove the execution of *Ex. PW1/F*.

8.3. The admission of signatures on a document is not proof of the contents of the document. The appellants have failed to prove as to how the signature of respondent no. 1 got placed on the Undertaking and whether he had knowledge of the contents thereof.

8.4. Both *PW1* (appellant no. 2) and *PW2* (appellant no. 1) have failed to affirm the fact of due execution, i.e., purchase of stamp paper, signing of Undertaking by respondent no. 1 and notarization of the same in the presence of respondent no. 1.

8.5. *PW2* has deposed that *Ex. PW1/F* was prepared and signed by respondent no. 1 and was later sent for attestation by the notary. *PW2* had also failed to affirm whether respondent no. 1 was present at the time of attestation of *Ex. PW1/F* by the notary public or whether respondent no. 1 had signed the register of notary public or not.

8.6. It is an admitted position by appellants that respondent no. 1 was an uneducated person who could not read or write English and Hindi, as no suggestion or rebuttal was made against said assertion of respondent no.1. Despite the same, no statement has been made on record by the appellants to show that the contents of alleged *Ex. PW1/F*, a document in Hindi, were read over and explained to the respondent no. 1.

8.7. Even the timeline of execution of alleged Undertaking and surrender of possession has not been established by the appellants. Firstly, in the

plaint, appellants alleged that respondent no. 1 approached them for vacating the suit shop at the end of June, 2004, whereas, in the Legal Notice dated 18th December, 2004 (*Ex. PW1/H Colly*), it was contended that proposal for vacating the suit shop was made by respondent no. 1 in July, 2004. Further, *PW1* has deposed that he does not remember the date of handing over of possession, whereas, *PW2* has deposed that possession was handed over in the second half of June, 2004. *DW1* had clearly stated that suit shop was vacated on 01st June, 2004. Thus, there are material discrepancies in the testimonies of appellants with regard to execution of *Ex. PW1/F*.

8.8. The appellants had willfully surrendered possession of suit shop, which resulted in determination of the lease/Rent Agreement dated 26th June, 2001. Impliedly, by conduct, the parties had terminated the lease/Rent Agreement.

8.9. The Rent Agreement dated 26th June, 2001, which is an unregistered document, envisages a lease in perpetuity and hence, was required in law to be compulsorily registered in terms of Section 17 of the Registration Act, 1908. It is submitted that objection regarding admissibility of a document in evidence can be raised even at the appellate stage.

8.10. Failure of respondent no. 1 to discharge the onus to prove any assertion/issues does not validate the case of the appellants, who were required in law to prove the due execution of *Ex. PW1/F*.

9. As regards the stand of respondent no. 2, the arguments raised by respondent no. 1 before this Court, as noted hereinabove, have been adopted.

FINDINGS & ANALYSIS

10. I have heard the counsels for the parties at length and perused the pleadings, documents and evidence on record.

11. The entire case of the appellants for recovery of possession of the tenanted premises/suit shop hinges on the enforceability of the Undertaking dated 01st July, 2004, *Ex. PW1/F*. The appellants have claimed that the surrender of possession was subject to the terms of the Undertaking, whereby, the respondent no. 1 undertook to demolish the building of the tenanted premises, erect a new structure and give possession of similar premises as the tenanted premises to the appellants by 30th November, 2004. On the other hand, it is the categorical case of respondent no. 1 that no such Undertaking was executed by him, and that one of the appellants, a CA, had obtained signature of respondent no. 1 on blank stamp papers under the garb of filing the same before the Income Tax Officer. As per respondent no. 1, the text of the Undertaking was inserted later on.

12. Thus, the crux of the controversy is whether the appellants, being the plaintiffs in the suit, had been able to prove the due execution of the Undertaking dated 01st July, 2004, *Ex. PW1/F*, as relied upon them. Though respondent no. 1 had admitted his signatures on the Undertaking, the learned Trial Court held that the appellants failed to prove due execution of the said Undertaking.

13. In the present appeal, the appellants have challenged the impugned judgment primarily on the ground that when the signatures on the Undertaking were admitted by respondent no. 1, the onus to prove that the same were obtained on blank paper, was on respondent no. 1. However, the said contentions of the appellants are without any basis, and are liable to be rejected. Admission of signatures on a document is not a proof of the contents of the documents. For valid execution of a document, two ingredients are to be met, firstly, placing of signatures on the document, and

secondly, knowledge of the contents thereof. In this regard, reference may be made to the case of ***Veena Singh (Dead) through Legal Representative Versus District Registrar/Additional Collector (F/R) and Another***[1], wherein, it was held as follows:

> *"xxx xxx xxx*
>
> ***59.*** *Similarly, Ratanlal and Dhirajlal's treatise on the law of evidence states as follows [N. Vijayraghavan and Sharath Chandran, Ratanlal & Dhirajlal : The Law of Evidence (LexisNexis, 2021).] :*
>
> *"[s 67.3] Execution of Document — Meaning*
>
> * * *
>
> ***Execution of a document is something different from mere signing of the document. The term execution is not defined …The ordinary meaning of executing a document is signing it as a consenting party thereto … Execution of the document means that the executant must have signed or put his thumb mark/impression, only after the contents of the document have been fully stated and read by the executant before he put his signature thereon. Mere admission of the initial by the executant would not be tantamount to an admission of execution of the document."***
>
> *xxx xxx xxx*
>
> *63. In Sayyapparaju Surayya v. Koduri Kondamma [Sayyapparaju Surayya v. Koduri Kondamma, 1949 SCC OnLine Mad 227], a Division Bench of the Madras High Court, while construing the provisions of Sections 35(1)(a) and (b) of the Registration Act, observed : (SCC OnLine Mad)*
>
> *"**The admission required therefore is admission of the execution of the document. … It is not enough for the person, who is the ostensible executant, to admit his signature on a paper on which, it may be, the document is ultimately engrossed. The identity of the papers on which the signature occurs is not sufficient. If a man says that he signed a blank paper on the representation that it was required for presenting a petition, as in the present case or if a man signs a completed document on the representation that his signature or thumb impression is required as an attesting witness, that admission of the signature or thumb impression in those circumstances cannot be construed to be an admission of the execution of the***

[1] (2022) 7 SCC 1.

> ***document***. *Far from its being an admission, it is a clear and unambiguous denial of the execution of the document. He must admit, in order to attract the provisions of Section 35(1) that he signed the document ... The admission of execution therefore must amount to an admission that the person admitting entered into an obligation under the instrument; in other words, that he had executed the document, signed it as a sale deed, mortgage deed, or a lease deed, as the case may be."*

64. *In Jogesh Prasad Singh v. Ramchandar Prasad Singh [Jogesh Prasad Singh v. Ramchandar Prasad Singh, 1950 SCC OnLine Pat 31] ("Jogesh Prasad Singh"), a Division Bench of the Patna High Court noted that the meaning of the phrase "execution" of a document had been well settled by another Division Bench of the High Court in Ebadut Ali v. Mohd. Fareed [Ebadut Ali v. Mohd. Fareed, 1916 SCC OnLine Pat 99 : AIR 1916 Pat 206 : 35 IC 56] ("Ebadut Ali"). The decision of the Division Bench in Ebadut Ali [Ebadut Ali v. Mohd. Fareed, 1916 SCC OnLine Pat 99 : AIR 1916 Pat 206 : 35 IC 56], which was cited with approval in Jogesh Prasad Singh [Jogesh Prasad Singh v. Ramchandar Prasad Singh, 1950 SCC OnLine Pat 31] , held : (Ebadut Ali case, SCC OnLine Pat para 11)*

> *"11. ...* ***In our view, execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. To be executed a document must be in existence; where there is no document in existence, there cannot be execution. … Where an executant clearly says that he signed on blank paper and that the document which he had authorised is not the document which he contemplated, the statement is a denial not an admission, of execution****."*

65. *Adverting to the above decisions and to the views of the Calcutta [Mohima Chunder Dhur v. Jugul Kishore Bhuttacharji, 1881 SCC OnLine Cal 1 : ILR (1881) 7 Cal 736] , Orissa [Uma Devi v. Narayan Nayak, 1984 SCC OnLine Ori 94] and Assam High Court [Bhutkani Nath v. Kamaleswari Nath, 1971 SCC OnLine Gau 53 : AIR 1972 Assam & Nagaland 15], the Single Judge of the Karnataka High Court in N.M. Ramachandraiah [N.M. Ramachandraiah v. State of Karnataka, 2007 SCC OnLine Kar 192] emphasised that the execution of the document does not mean merely signing it, but signing it after having understood its contents in their entirety : (N.M. Ramachandraiah case, SCC OnLine Kar para 15)*

> *"****15. Therefore, the law is well settled. Execution of a document does not mean merely signing, but signing by way of assent to the terms of the contract embodied in the document.***

Execution consists in signing a document written out and read over and understood, and does not consist of merely signing a name upon a blank sheet of paper. It is a solemn act of the executant who must own up the recitals in the instrument and there must be clear evidence that he put the signature after knowing the contents of document fully. To be executed, a document must be in existence; where there is no document in existence there cannot be execution. Mere proof or admission that a person's signature appears on a document cannot by itself amount to execution of a document. Registration does not dispense with the necessity of proof of execution when the same is denied. Thus, execution of document is not mere signing of it."

(emphasis supplied)

xxx xxx xxx

67. *In Ghasita Ram Bajaj v. Raj Kamal Radio Electronic [Ghasita Ram Bajaj v. Raj Kamal Radio Electronic, 1973 SCC OnLine Del 109], a Single Judge of the Delhi High Court, while differentiating between signatures on ordinary documents and documents stamped in accordance with the law relating to negotiation of instruments, observed that in the case of ordinary documents: (SCC OnLine Del para 8)*

"8. ... ***The meaning of execution of a document ordinarily implies that a person making his signature by way of execution knew or should have known the nature of the document which he was signing****."*

68. *In Kamlabai v. Shantirai [Kamlabai v. Shantirai, 1980 SCC OnLine Bom 152], a Division Bench of the Bombay High Court, in the context of Section 68 of the Evidence Act, held : (SCC OnLine Bom paras 30-31)*

"30. ... ***In Sarkar's Evidence Act, p. 639, the meaning and the proof of the word "execution" has been set out. It says "executed" means completed. "Execution" is the last act or series of acts which completes it. Execution consists in signing a document written out and read over and understood and does not consist of merely signing a name upon a blank sheet of paper. To be executed, a document must be in existence; where there is no document in existence, there can be no execution****."*

31. ***It seems to us plain that a person cannot be said to execute a document where he does not do so with the intention of making it. This may appear to be simple, but it is clearly, in our opinion, full of meaning and import. The word***

"execution" in a sense means the making of a document, and a person can be said to have made or authorised a document where with the intention and knowledge of bringing into existence a particular kind of document he prepares or gets prepared, such a document and signs it in token of his having accepted that document, with a desire to bring it into existence. Mere signing of a document without the intention of bringing that document into existence, meaning thereby giving effect to it would not properly speaking attract the expression "execution"."

(emphasis supplied)

69. *In S. Ramamurthy v. Jayalakshmi Ammal [S. Ramamurthy v. Jayalakshmi Ammal, 1990 SCC OnLine Mad 501], a Single Judge of the Madras High Court, while interpreting Section 35 of the Registration Act, observed : (SCC OnLine Mad para 11)*

"11. Let us first examine the meaning of "admission of the execution of a document for the purpose of Section 35 of the Registration Act," ***The execution of a document is not mere signing of it. It is a solemn act of the executant who must own up the recitals in the instrument and there must be clear evidence that he put his signature in a document after knowing fully its contents. The executant of a document must, after fully understanding the contents and the tenor of the document, put his signature or affix his thumb impression. In other words, the execution of a document does not mean merely signing but signing by way of assent to the terms of the contract of alienation embodied in the document****."*

70. *In Union Bank of India v. Dhian Pati [Union Bank of India v. Dhian Pati, 1996 SCC OnLine HP 90], a Single Judge of the Himachal Pradesh High Court had to determine whether a deed of mortgage had been validly executed. Since the Contract Act, 1872 and the Registration Act did not define "execution", the Single Judge deduced the meaning of the phrase in dictionaries, legal lexicons and precedent. Thereafter, the Single Judge concluded : (SCC OnLine HP para 21)*

"21. ***Thus, on the basis of the aforesaid meaning of the words "execution of document" it only signifies that the person executing such a document should sign such a document with free consent. The execution of a document would be complete in case the executant had signed the document voluntarily, without any duress, knowing the contents of the document****."*

xxx xxx xxx

> ***73. <u>The "execution" of a document does not stand admitted merely because a person admits to having signed the document. Such an interpretation accounts for circumstances where an individual signs a blank paper and it is later converted into a different document, or when an individual is made to sign a document without fully understanding its contents. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a civil court or a writ court, since registration will have to be allowed once the signature has been admitted.</u>***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

14. Thus, as per the law laid down by the Supreme Court, execution of a document does not envisage merely signing of a document, but execution consists of signing a document that has been written out, read over and understood.

15. Similarly, holding that mere putting of signature does not amount to admission of the execution of a document and that a plaintiff is required to adduce evidence to show that the document had been properly executed, Kerala High Court in the case of ***In re : Kuttadan Velayudhan and others***[2], held as follows:

> *"xxx xxx xxx*
>
> ***9. <u>To sign means to affix the signature. But when it comes to the signing of a written instrument, it implies more than the act of affixing a signature. It implies more than the clerical act of writing the name. The intention of the person signing is important. The person should have affixed the signature to the instrument in token of an intention to be bound by its conditions. It has been said that for a signing consists of both the act of writing a person's name and the intention in doing this to execute, authenticate or to sign as a witness. The execution of a deed or other instrument includes the performance of all acts which may be necessary to render it complete as a deed or an instrument importing the intended obligation of every act required to give the instrument validity, or to</u>***

[2] 2001 SCC OnLine Ker 14.

carry it into effect or to give it the forms required to render it valid. Thus, the signature is an acknowledgment that the person signing has agreed to the terms of the document. This can be achieved only if a person signs after the documents is prepared and the terms are known to the person signing. In that view of the matter, mere putting of signature cannot be said to be execution of the document*.*

10. *In Ramlakhan Singh v. Gog Singh, AIR 1931 Pat 219, a Division Bench of the Patna High Court held that* ***the onus cannot be discharged merely proving the identity of the thumb impression. It must be further proved that the thumb impression was given on the document after it had been written out and completed. The fact that the defendant's thumb impression appears on the paper is a strong piece of evidence in favour of the plaintiff and in the majority of cases very slight evidence would be necessary to prove that the thumb impression was given on the document after it had been written out and completed. But the fact remains that if the evidence offered by the plaintiff to prove that the document was duly executed or in other words, that the thumb impression was given on the document after it had been written out and completed is found to be unreliable, he cannot be deemed to have discharged the onus properly. Regarding the presumption under Section 114 of the Evidence Act, the Court held that although a certain presumption may arise in favour of the plaintiff, yet it maybe rebutted at the same time by circumstances brought into light in the plaintiffs own evidence by means of cross-examination or otherwise and independently of the evidence adduced by the defendant. Thus, the Court held that the mere admission of the thumb impression or signature does not shift the burden from the plaintiff****. In the same Volume in Chudhai Lal Dass v. Kuldip Singh, AIR 1931 Pat 266 — another Division Bench took the view that* ***where the defendant admits only that he had put a thumb mark or signature on a document which was not hand-note sued upon, the admission does not amount to admission of the execution of the hand-note and consequently the burden of proving that the particular hand-note sued upon was duly executed by the defendant is upon the person issuing upon the same****.*

xxx xxx xxx

15. *After considering the above decisions, we prefer to follow the decision in Seithammarakkath Mammad v. Kovommatath Mammad, 1957 Ker LT 328 : (AIR 1957 Ker 63) and the decision in Ramlakshan Singh v. Gog Singh, AIR 1931 Pat 219.* ***According to us, mere putting of signature does not amount to admission of the execution of the document. Ordinarily, signature merely means putting one's name***

or any other mark to identify a person making the mark. But when a word 'signature' is attributed with regard to the written document, which creates obligation on the person signing it, it can only mean signing the document after the document is prepared and completed. There, the signature is put to show that the person who signed has agreed the terms and conditions of that document. The intention with regard to the acknowledgment of the term should be there. When the person signs the same, then only it can be said that the person has executed the document. Hence, according to us, when a person says that he put the signature on a blank paper that does not mean that he had admittedly executed the document. *According to us, the decision in AIR 1938 Nag 152 does not deal with a case where the signature was put on a blank paper. That decision related to the case where a document was executed, but it was stated that it was not intended to be acted upon. It was in that circumstances that the Court held that when a signature appears on a document that amounts to admission of the execution of the document and the burden is on the person disputing that the document has not come into effect, to prove that it has not come into effect.*

16. *It was then argued that a person will not entrust a signed blank paper to another person without any intention. It is argued that a person signing a blank paper would have agreed that he agrees for all the terms which the plaintiff puts in the document and that it was in token thereof that he has put his signature and hence, the burden should be shifted to the person, who had signed the papers.* ***According to us, the contingency will not shift the burden of proof. We cannot ignore the circumstances under which where a person may be compelled to give signed blank paper to another person. Person who signs the paper may not know what are the conditions, which will be imposed by the other side. Hence, in such circumstances, a general proposition cannot be laid down that the burden should be on the person, who has subscribed his signature to a blank paper. As it was stated in AIR 1931 Pat 219, the fact that the defendant's thumb impression appears on the paper is a strong piece of evidence in favour of the plaintiff and in the majority of cases very slight evidence would be necessary to prove that the thumb impression was given on the document after it had been written out and completed. Thus, evidence that has to be adduced by the plaintiff in such case will be less onerous than in cases where there is complete denial of signature and execution. But if the plaintiffs evidence is not sufficient or unreliable that onus cannot be said to be discharged. We may further say that always the burden of proof is on the person, who wants to get relief in the suit.*** *As always stated, onus of proof shifts during the pendency of the litigation depending upon the nature*

> *of the evidence given by either side. The plaintiff may give evidence regarding the execution of the document. If the fact of thumb impression or signature is admitted, that will give more reliability to the plaintiffs evidence. If such evidence adduced by the plaintiff is reliable and if the plaintiff is able to discharge his burden sufficiently, then onus will shift on the defendant to show that he had not executed the document.* ***We only say that the plaintiff cannot succeed in the case without giving evidence. Because the defendant had admitted his signature, he had to give some evidence to show that the document has been properly executed****. Further things depend upon the evidence adduced and on facts and circumstances of each case. When both sides have adduced evidence, the question of burden of proof vanishes into the air. Hence, we are of the view that the decisions given in (1990) 1 Ker LT 456 : (1990) 2 Ker LJ 115 putting the burden on the defendant have not laid down the correct law.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

16. Thus, as per the established law, merely signing a document does not amount to its execution; execution requires signing with the intent to accept and give effect to the contents of the document. A signature on a blank paper cannot be treated as admission of execution, and the burden of proof does not automatically shift to the person who signed it. While an admitted signature is strong evidence in favour of the plaintiff, the plaintiff must still prove proper execution through reliable evidence.

17. Accordingly, in view of the aforesaid settled position of law, the Undertaking, *Ex. PW1/F*, cannot be said to have been 'executed' merely based upon admission of signature thereupon by respondent no. 1. This is even more so in light of respondent no. 1's submission that the said signature was taken on a blank paper by the appellants.

18. In the present case, the appellants have failed to prove the ingredients of valid execution in respect of the alleged Undertaking, *Ex. PW1/F*. Both *PW-1* and *PW-2* have failed to affirm the fact of due execution, i.e., signing

of the Undertaking, purchase of stamp paper, and notarization of the same in the presence of respondent no. 1. The *PW-1* in his cross admitted that he did not prepare *Ex. PW1/F*. He further admitted that the said document was neither typed nor notarized in his presence. *PW-1* also failed to confirm if respondent no. 1 was present at the time of notarization of the alleged undertaking. Reference may be made to the cross-examination of *PW-1* dated 24th October, 2011, relevant portions of which, are reproduced as under:

> *"xxx xxx xxx*
>
> ***It is correct that I did not prepare Ex.PW1/F. It is also correct it was also not typed in my presence. I cannot say if the signatures of the defendant no.1 on Ex.PW1/F were taken on the blank stamp paper. It is wrong to suggest that the document Ex.PW1/F was got later filled up by plaintiff no.1. It is correct that Ex.PW1/F was not notarized in my presence. I cannot say if Sh. Ram Kishan was not present at the time of notarizing of Ex.PW1/F. It is correct that I do not know who prepared the drawings (Naksha) on Ex.PW1/F.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

19. Similarly, *PW-2* in his cross-examination failed to affirm that the respondent no. 1 was present at the time of attestation of the alleged Undertaking by the notary. He further deposed that he did not remember whether the respondent no. 1 had signed on the register of notary public or not. Cross-examination of *PW-2* dated 25th March, 2011, is reproduced as under:

> *"xxx xxx xxx*
>
> *Q Is it correct that defendant No. 1 was not present at the time of putting Notarial Stamps.*
> *Ans. the document was prepared by the defendant No. 1 and signed and later send for attestation by the notary. I do not remember who has send it for notary. Vol. On the insistence of Def No. 1 the document got prepared by him in Hindi in the presence of both the*

parties. ***I do not remember whether def No. 1 was present at the time of attestation by notary****.*

It is incorrect to suggest that the document was not got prepared by Defendant NO. 1. It is incorrect to suggest that I had used a blank stamp paper and got the same typed on my own. ***I do not remember whether the defendant no. 1 has signed on the register of notary public or not****. ……*

xxx xxx xxx"

(Emphasis Supplied)

20. Further, respondent no. 1, deposing as *DW-1*, in para 5 of his Evidence Affidavit, has categorically deposed that the alleged Undertaking is a forged and false document. He has also stated in his Affidavit that he was not present when the alleged Undertaking on the stamp paper was notarized. Para 5 of Evidence Affidavit of *DW-1*/respondent no. 1 herein, is reproduced as under:

"xxx xxx xxx

5. ***I say that the Plaintiffs fraudulently used one of the abovementioned blank stamp papers signed by me and executed and undertaking dated 01.07.2004, which is filed by the Plaintiff as Exhibit PW-1/F. I also say that the abovementioned undertaking is a forged document and is completely false. I also say that I was not present at the time the aforementioned stamp paper was notarized****.*

xxx xxx xxx"

(Emphasis Supplied)

21. Similarly, in his cross-examination, *DW-1*/respondent no. 1 herein denied the suggestion that he appeared before the notary public for notarization of the document, *Ex. PW1/F*, i.e., the alleged Undertaking. *DW-1* also denied the suggestion that the stamp paper of Undertaking was purchased by him. Cross-examination of *DW-1* dated 05th July, 2013, is reproduced as under:

"xxx xxx xxx

> …. ***It is wrong to suggest that undertaking Ex. PW1/F is neither a forged document nor false. It is wrong to suggest that I appeared before the Notary Public for the Notarization of the document Ex. PW1/F. It is wrong to suggest that the plaintiffs handed over the suit property to me in terms of undertaking Ex. PW1/F (Vol. Plaintiff after getting that the amount deposited with me delivered the possession). Presently I am not in possession of the suit property as I have sold the same. It is wrong to suggest that I have not sold the suit property or that I am in possession of the suit property. It is wrong to suggest that stamp paper of undertaking was purchased by me*****…..
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

22. It is to be noted that no witness was produced by the appellants who had personal knowledge of the execution of the alleged Undertaking, *Ex. PW1/F*, or who was a witness to respondent no. 1 signing the said document. Further, there is no averment in the Evidence Affidavits of either *PW-1* or *PW-2* that the respondent no. 1 knew of the contents of the Undertaking. It is also not deposed as to how and when the Undertaking was purportedly handed over to the appellants/plaintiffs in the suit.

23. *PW-1* in his cross-examination had admitted that respondent no. 1 was an uneducated man. *DW-1* also in his cross-examination has deposed that, *"I do not know how to read and write English or Hindi language, however, I can understand Hindi"*. The appellants did not put any suggestion to rebut this statement or to suggest that the alleged Undertaking was read over and explained to respondent no. 1. Hence, no statement has been made on record to show that the contents of the purported Undertaking were known to respondent no. 1.

24. It is also to be noted that the notary who has notarized the Undertaking, *Ex. PW1/F*, was also not examined and neither was the notary register produced. In case of dispute about execution of a notarized

document, requirement of examination of notary is crucial, in order to establish authenticity of the document. Thus, holding that mere fact that the document was notarized did not lend any authenticity to the document in the absence of seeing the notary register kept by the notary in the course of his conduct as a notary, in the case of ***Prataprai Trumbaklal Mehta Versus Jayant Nemchand Shah and another***[3], it was held as follows:

> *"xxx xxx xxx*
>
> ***11.*** *On 9th August 1952, the President of India granted assent to the Notaries Act, 1952 passed by our Parliament. The said Act came into force on 14th December 1956 on issue of necessary notification and publication thereof in the Government Gazette. Prior to the passing of the said Act, the Government of India was empowered to appoint Notary-Public under Sections 138 and 139 of the Negotiable Instruments Act for the limited purpose of functioning of Notaries under the said Act. Prior to the passing of the said Act, the Master of Faculties in England also used to appoint Notaries Public in India for performing all notarial functions. Section 3 of the said Act empowers the Central Government to appoint any legal practitioner or any other person as a notary for the whole of India or part thereof. The said Section also empowers the State Government to appoint any legal practitioner or other person who possess prescribed qualifications as a notary for functioning as such within the State. The notarial functions include "certifying copies of documents" as true copies of the original. Section 15 of the Notaries Act, 1952 empowers the Central Government to make rules to carry out the purposes of the Act including prescribing of fees payable to a notary for doing any notarial act and prescribing of form of registers required to be maintained by a notary, and particulars to be entered therein. In exercise of the powers conferred by Section 15 of the Notaries Act, 1952, the Central Government has framed the necessary rules. Rule 10(1) of the Notaries Rules, 1956 prescribes that every notary shall charge a fees for certifying copies of documents as true copies of the original at the rate prescribed therein. Rule 11(9) of the said Rules provides that every notary shall grant a receipt for the fees and charges realised by him and maintain a register showing all the fees and charges realised for every single notarial act. Rule 12 of the said Rules prescribes for use of seal of notary. Rule 11(2) of the said Rules in terms provides that every notary shall maintain notarial register in*

[3] 1991 SCC OnLine Bom 205.

prescribed Form No. 15. ***The prescribed form of the register provides for entry of every notarial act in the notarial register and taking of signature of the person concerned in the register and entry in respect of fees charged. It is, therefore, not correct to state, as stated by Mr. Sonavane, that no entry need be made in the notarial register in respect of the notarial act of certifying copy of document as true copy of the original.*** *Even if one or two column of the said form is not applicable, entries must be made in the said register filling up remaining columns as are applicable and adapting the format accordingly.* ***It is the responsibility of a notary to satisfy himself that the original document intended to be executed before him was executed by the person concerned and not by someone else in the name of a different person. It is the responsibility of the notary to satisfy himself about the identity of the execution of the original document by making all reasonable inquiries including insistence of identification of a member of the public by a legal practitioner known to the notary. Unless the executant is known to the notary personally, the notary must insist on written identification of the executant by an advocate in order to minimise the possibility of cheating by personification. Negligence of a notary in the discharge of his notarial functions may jeopardise the interest of third parties and public interest itself.*** *If the work of comparison of copy of the document with the original and the prima facie scrutiny of authenticating the original involves labour for too little a fee, the person concerned need not opt to become a notary. Notaries, formerly known as Notary-Public, enjoy high status throughout the country and the Courts take judicial notice of the seal of the notary and presume that the document in question must have been certified as true copy by the notary after taking of all possible care by the notary in comparing the copy with its original and due verification of the identity of the executant and the person appearing before the notary for the certification.*

12. *Having regard to the provisions of the Act and the Rules referred to hereinabove, I am satisfied in the instant case that witness Sonavane did not place his signature and seal on the copy of the document (Exhibit '2') after taking any care as expected of him and his conduct in not keeping even a copy of the document on his record or taking the signature of the person who had come to him in the notarial register is blameworthy. It was held by the High Court of Punjab in the case of Phagu Ram v. State, AIR 1965 Punjab 220, that the essential function of a notary is to bestow an interest of authenticity upon the acts performed by him. In that case the notarial act consisted of authentication of translation of a document from one language to another. It was held that the act of failure on the part of*

the notary to issue receipt for the fee charged and his omission to enter the particulars of the fee charged etc. in the register in terms of Rule 11(9) of the Notaries Rules, 1956 amounted to breach on the part of the notary. It is, therefore, not possible to attach any evidentiary value whatsoever to the notarised copy of the original document. In the circumstances of the case, it is not possible to hold that the plaintiff is withholding the original document. It is not the case of Mr. Sonavane that the plaintiff had approached him for notarisation of the impugned copy.

xxx xxx xxx"

(Emphasis Supplied)

25. Likewise, delving on the aspect of proving execution of a document before a notary, in the case of ***H.K. Taneja and others Versus Bipin Ganatra***[4], it was held as follows:

"xxx xxx xxx

7. *It may be mentioned that that was a case of only a certification of copy of a document as a true copy. Our case goes much further.* ***It is the case of the execution of the original document itself. The executant is required to be present before the notary. He is required to be identified before the notary. He is required to sign before the notary. The notary is required to witness such an act and register the transaction. Keeping in mind that the document relied upon by the applicant herein is not registered and hence is inadmissible in evidence, even the factum of the execution of the document is not even prima facie shown by the applicant upon proving the notarial act. It is for the applicant to make out his case. The prima facie case of proof of the execution of the document on a given date by the executant before the notary can be evidenced by the production of the true or certified copy of the relevant portion of the notarial register showing that the entry was made on the relevant date in the normal course of the conduct of the notary. The applicant has undertaken no exercise to substantiate his case of the execution of the document otherwise completely inadmissible in evidence. Since even the notarial act is not shown even a prima facie case cannot be made out.***

xxx xxx xxx

10. *It may be mentioned straightway that* ***the absence of registration***

[4] 2008 SCC OnLine Bom 1211.

> ***as well as the required procedure for notarization would make the document so inadmissible in evidence as to not allow the applicant to base his case upon such a document. The object of registration as well as notarization is lost if a document of the kind can be looked into or considered by the Court, even prima facie, to take the contents as correct****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

26. Similarly, holding that in case of dispute about execution of a notarized document, requirement for examination of the notary is crucial to prevent fraud and ensure the authenticity of the document, in the case of ***Rameshwar Prasad Dwivedi Versus Raj Kumar and Another***[5], it was held as follows:

> *"xxx xxx xxx*
>
> ***19. In my considered opinion, in case of dispute about execution of a notarized document, requirement for examination of the notary is crucial to prevent fraud and ensure the authenticity of the document. The notary's testimony can provide valuable insights into the circumstances surrounding the execution of the document and the identity of the signatory. It is noteworthy that notarization is not a guarantee of the document's validity or legality. The notary's role is limited to attesting the execution of the document and verifying the identity of the signatory. However, where the notary is not available for examination, the court may consider alternative methods of proving the document's genuineness, yet the absence of the notary's testimony may weaken the probative value of the document****.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

27. In the present case as well, as rightly concluded by the Trial Court, there are material inconsistencies in the testimonies of *PW-1* and *PW-2* regarding notarization of the alleged unregistered Undertaking, *Ex. PW1/F*. Thus, in order to prove the genuineness of the Undertaking, the notary public should have been examined and the notary register ought to have

been produced in evidence. The same was further even more essential in view of respondent no.1's claim that his signature on the alleged Undertaking was taken on a blank stamp paper.

28. Accordingly, this Court finds no error in the finding of the Trial Court that the appellants herein, i.e., plaintiffs in the suit, failed to prove due execution of the alleged Undertaking dated 01st July, 2004, marked as *Ex. PW1/F*.

29. Further, it is to be noted that *PW-1* in his cross-examination has admitted that *PW-2*/appellant no. 1, being a CA, used to file ITRs of defendant no. 1/respondent no. 1 herein. He has also failed to deny that he had filed the ITR for the accounting years 2002-03 and 2003-04, when the misappropriation of blank signed pages took place. Relevant portion of the cross-examination of *PW-1* dated 24th October, 2011, is reproduced as under:

> *"Suit No. 370/11*
>
> *PW-1 Cross-examination of Sh. Ajay Kumar Jain, S/o S.C. Jain, R/o C-1967, Sushant Lok-I, Gurgaon, Haryana.*
>
> *XXXXXX by Sh. Anupam Srivastava, Adv., for the defendant.*
>
> ***It is correct that Sh. Sushil Kumar is a Chartered Accountant and I am working with him. It is correct that we are brothers. I was introduced to the defendant no. 1 by Sh. Manoj Jain.***
>
> ***It is correct that plaintiff no. 1 used to file income tax returns of the defendant no.1 and his wife. Vol. I used to file the returns and, there was no need for a CA to file the returns of defendant no. 1 and his wife. I can not say if I or Sh. Sunil Kumar Jain filed the income tax returns for the accounting year 2002-03 and 2003-04, however, I filed the returns for about 2-3 years. It is correct the relation of the plaintiffs was cordial with the defendant no. 1. It is incorrect that defendant no. 1 depose faith in faith in me and in plaintiff no. 1 or that we acted like an attorney for the defendant***

[5] 2024 SCC OnLine MP 1360.

no.1. It is wrong to suggest that the plaintiffs were in position to dominate the defendant no.1. It is correct that defendant no.1 is an uneducated person. The defendant no.1 was a simpleton till the time we allowed the defendant no.1 to carry out the renovation. ……

xxx xxx xxx"

(Emphasis Supplied)

30. *PW-2* in his cross-examination has also admitted to being a CA and having filed ITRs for respondent no. 1 herein. *PW-2* has also failed to deny that he had filed the ITR for accounting years 2002-03 and 2003-04, when the misappropriation of blank signed pages took place. He also admits to having filed returns for defendant no. 1 for about 2-3 years. The material portions of the cross-examination of *PW-2* dated 25th March, 2011, are extracted here under:

"xxx xxx xxx

XXXXX by Ld. Counsel Sh. Anupam Srivastava for defendant no. 1

It is correct that I am a chartered accountant by profession and plaintiff no. 2 Sh. Ajay Kumar Join works with me. It is wrong to suggest that one Sh. Manoj Jain introduced me and plaintiff no. 2 to defendant no. 1. I know Sh. Manoj Join.

I used to file the Income Tax returns of defendant no. 1 but I do not remember if I used to file the returns for his wife, as well. I do not remember if I had filed the Income Tax returns for the year 2002-03, 2003-04 for defendant no.1 and his wife but I remember filing returns for defendant No.1. I have filed the returns for the defendant no. 1 for about 2-3 yrs.

It is correct that relations between me , plaintiff no. 2 and defendant no. 1 were cordial. It is correct that the defendant no.1 trusted me in professional manner but he had no blind faith on me. It is wrong to suggest that for Tax purposes I acted as attorney of defendant no. 1.

xxx xxx xxx"

(Emphasis Supplied)

31. Perusal of the aforesaid establishes that the appellants, *PW-1* and *PW-2*, have admitted in their cross-examinations that the respondent no.

1/landlord was an illiterate and uneducated person and that they had filed his ITRs for certain periods. They have further admitted that their relations were cordial. Such admissions go to show that there was a fiduciary relationship between the parties. Thus, the burden was on the appellants/the tenants, to substantiate that the alleged Undertaking was validly executed. In this regard, reference may be made to the judgment in the case of ***Krishna Mohan Kul and Another Versus Pratima Maity and Others***[6], wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***12.*** *As has been pointed out by the High Court, the first appellate court totally ignored the relevant materials and recorded a completely erroneous finding that there was no material regarding age of the executant when the document in question itself indicated the age. The court was dealing with a case where an old, ailing illiterate person was stated to be the executant and no witness was examined to prove the execution of the deed or putting of the thumb impression. It has been rightly noticed by the High Court that the courts below have wrongly placed the onus to prove execution of the deed by Dasu Charan Kul on the plaintiffs. There was challenge by the plaintiffs to the validity of the deed. The onus to prove the validity of the deed of settlement was on Defendant 1.* ***When fraud, misrepresentation or undue influence is alleged by a party in a suit, normally, the burden is on him to prove such fraud, undue influence or misrepresentation. But when a person is in a fiduciary relationship with another and the latter is in a position of active confidence the burden of proving the absence of fraud, misrepresentation or undue influence is upon the person in the dominating position, and he has to prove that there was fair play in the transaction and that the apparent is the real, in other words, that the transaction is genuine and bona fide. In such a case the burden of proving the good faith of the transaction is thrown upon the dominant party, that is to say, the party who is in a position of active confidence****. A person standing in a fiduciary relation to another has a duty to protect the interest given to his care and the court watches zealously (sic)all transactions between such persons so that the protector may not use his influence or the confidence to his advantage.* ***When the party complaining***

[6] (2004) 9 SCC 468.

shows such relation, the law presumes everything against the transaction and the onus is cast upon the person holding the position of confidence or trust to show that the transaction is perfectly fair and reasonable, that no advantage has been taken of his position. *This principle has been ingrained in Section 111 of the Indian Evidence Act, 1872 (in short "the Evidence Act"). The rule here laid down is in accordance with a principle long acknowledged and administered in the Courts of Equity in England and America. This principle is that he who bargains in a matter of advantage with a person who places confidence in him is bound to show that a proper and reasonable use has been made of that confidence.* ***The transaction is not necessarily void ipso facto nor is it necessary for those who impeach it to establish that there has been fraud or imposition, but the burden of establishing its perfect fairness, adequacy and equity is cast upon the person in whom the confidence has been reposed. The rule applies equally to all persons standing in confidential relations with each other. Agents, trustees, executors, administrators, auctioneers, and others have been held to fall within the rule. The section requires that the party on whom the burden of proof is laid should have been in a position of active confidence.*** *Where fraud is alleged, the rule has been clearly established in England that in the case of a stranger equity will not set aside a voluntary deed or donation, however improvident it may be, if it be free from the imputation of fraud, surprise, undue influence and spontaneously executed or made by the donor with his eyes open.* ***Where an active, confidential or fiduciary relation exists between the parties, there the burden of proof is on the donee or those claiming through him. It has further been laid down that where a person gains a great advantage over another by a voluntary instrument, the burden of proof is thrown upon the person receiving the benefit and he is under the necessity of showing that the transaction is fair and honest****.*

13. In judging the validity of transactions between persons standing in a confidential relation to each other, it is very material to see whether the person conferring a benefit on the other had competent and independent advice. The age or capacity of the person conferring the benefit and the nature of the benefit are of very great importance in such cases. It is always obligatory for the donee/beneficiary under a document to prove due execution of the document in accordance with law, even dehors the reasonableness or otherwise of the transaction, to avail of the benefit or claim rights under the document irrespective of the fact whether such party is the defendant or plaintiff before the court*.*

xxx xxx xxx"

(Emphasis Supplied)

32. It is also to be noted that there are material discrepancies in the testimony of the plaintiffs' witnesses regarding the timeline of execution of the Undertaking and the surrender of possession of the suit shop. In Para 7 of the plaint, the appellants/plaintiffs in the suit state that the respondent no. 1 approached them for vacating the suit shop in the end of June, 2004. Para 7 of the plaint filed before the Trial Court reads as under:

"xxx xxx xxx

7. ***That in the end of June, 2004, the defendant no. 1 approached the plaintiffs with a proposal of re-construction of entire property No. E-108/2 (supra) and sought the co-operation of the plaintiffs in re-construction of the property after demolition of the entire old structure and virtually requested the plaintiffs to vacate their suit shop temporarily, with the undertaking and promise that he would deliver the peaceful possession of the newly built shop to the plaintiffs having same area and same location with minor variations in the length and breadth, and on the same terms and conditions as mentioned in Rent Agreement dated 26.06.2001 within five months i.e., on or before 30.11.2004 as per undertaking/writing dated 01.07.2004 marked as P-5 with all fittings as before. Further the defendant no. 1 also undertook to compensate the plaintiffs for the loss of business and goodwill during the construction period @ Rs. 20,000/- per month****.*

xxx xxx xxx"

(Emphasis Supplied)

33. *PW-1* in his cross-examination deposed that he did not remember the date of hand over of the possession of the suit shop. Cross-examination of *PW-1* dated 24th October, 2011 in this regard, reads as under:

"xxx xxx xxx

It is correct that a Juice shop was being run from the suit premises. Vol. It was for a short period on her behalf. We were the owners of the Juice shop. It is wrong to suggest that we did not use the suit premises for accounting purpose. ***The possession of the suit property was handed over to defendant no. 1 only for renovation***

purposes, on our own free will. I do not remember the date of handing over of possession. ....

xxx xxx xxx"

(Emphasis Supplied)

34. Further, as per the cross-examination of *PW-2*, the possession of the suit shop was handed over some time in the second half of June, 2004. Cross of *PW-2* dated 25th March, 2011, reads as under:

"xxx xxx xxx

It is correct that we handed over the possession of the tenanted premises of the defendant no. 1 sometimes on 2nd half of June 2004. It is incorrect to suggest that the possession was handed over on 1 of June 2004.

xxx xxx xxx"

(Emphasis Supplied)

35. Respondent no. 1, deposing as *DW-1*, in his Evidence Affidavit in Para 3 has clearly stated that the tenanted premises/suit shop was vacated on 01st June, 2004. It is pertinent to note that the appellants have failed to cross-examine the respondent no. 1 on this aspect. Para 3 of the Evidence Affidavit of *DW-1*, reads as under:

"xxx xxx xxx

3. ***I say that the Plaintiff vacated the said shop at their own free will and choice on 1st of June, 2004*** *after taking their entire security amount of Rs. 3,40,000.00 (Rupees Three Lacs and Forty Thousand Only) from me. I say that I have paid Rs.2,00,000.00/- (Rupees Two Lacs Only) in cash and Rs.,1,50,000.00/- (Rupees One Lac and Fifty Thousand Only) was paid by me through cheque in the name of Mr. Manoj Jain on dated 04.08.2004, as per the instructions of the Plaintiff. I say that the Plaintiff assured me that the amount of Rs. 10,000.00 (Rupees Ten Thousand Only) shall be adjusted towards the Income Tax Return matters.*

xxx xxx xxx"

(Emphasis Supplied)

36. Hence, this Court finds no error in the finding of the learned Trial Court that there are vital contradictions in the testimonies of the *PWs* so far

as the date of handing over of the possession of suit shop is concerned. This Court is also in agreement with the conclusion of the Trial Court that if the possession of the suit shop was handed over by the appellants/plaintiffs in the suit to respondent no.1/defendant no. 1 in the suit in June, 2004, i.e., prior to the execution of *Ex. PW1/F* on 01st July, 2004, then the alleged Undertaking dated 01st July, 2004 was not in existence at the time of handing over of the premises/suit shop in question. Thus, the admitted surrender of possession of suit shop prior to 01st July, 2004 means that the possession was handed over without the alleged Undertaking having been executed.

37. The admitted vacation of the tenanted premises, removing all articles therefrom, cessation of payment of rent thereafter on the part of the appellants, and acceptance of the possession by the respondent no. 1 are all acts inconsistent with the currency of a tenancy. Thus, impliedly the parties have terminated the Rent Agreement dated 26th June, 2001 (*Ex. PW1/E*) by mutual consent. The willing surrender of possession of the suit shop by the appellants resulted in determination of lease under Section 111(f) of the Transfer of Property Act, 1882 ("Transfer of Property Act"). In this regard, reference may be made to the judgment in the case of ***Shah Mathuradas Maganlal & Co. Versus Nagappa Shankarappa Malage and Others***[7], wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***19. A surrender under clauses (e) and (f) of Section 111 of the Transfer of Property Act, is a yielding up of the term of the lessee's interest to him who has the immediate reversion or the lessor's interest. It takes effect like a contract by mutual consent on the lessor's acceptance of the act of the lessee.*** *The lessee cannot,*

[7] (1976) 3 SCC 660.

> *therefore, surrender unless the term is vested in him; and the surrender must be to a person in whom the immediate reversion expectant on the term is vested. Implied surrender by operation of law occurs by the creation of a new relationship, or by relinquishment of possession. If the lessee accepts a new lease that in itself is a surrender. Surrender can also be implied from the consent of the parties or from such facts as the relinquishment of possession by the lessee and taking over possession by the lessor.* ***Relinquishment of possession operates as an implied surrender. There must be a taking of possession, not necessarily a physical taking, but something amounting to a virtual taking of possession. Whether this has occurred is a question of fact****. In the present case if the mortgagor was not able to redeem the appellant mortgagee was to enjoy the property in accordance with the terms of the mortgage and also to sell the property for recovery of debts. This feature shows that the appellant surrendered the tenancy from November 7, 1953.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

38. Even otherwise, the Rent Agreement dated 26th June, 2001, *Ex. PW-1/E*, is an unregistered document and is therefore, inadmissible in evidence. The Rent Agreement in the present case envisages a lease in perpetuity and hence, was required in law to be compulsorily registered in terms of Section 17 of the Registration Act, 1908 ("Registration Act"). Thus, in terms of Section 49 of the Registration Act, the Rent Agreement was inadmissible in evidence. Reference in this regard may be made to the judgment in the case of ***Anthony Versus K. C. Ittoop & Sons and Others***[8], wherein, it was held as follows:

> *"xxx xxx xxx*
>
> ***8.*** ***The lease deed relied on by the plaintiff was intended to be operative for a period of five years. It is an unregistered instrument. Hence such an instrument cannot create a lease on account of three-pronged statutory inhibitions. The first interdict is contained in the first paragraph of Section 107 of the Transfer of Property Act, 1882*** *(for short "the TP Act") which reads thus:*

[8] (2000) 6 SCC 394.

"107. A lease of immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent, can be made only by a registered instrument."

(emphasis supplied)

***9. <u>The second inhibition can be discerned from Section 17(1) of the Registration Act 1908 and it reads thus</u>**: (only the material portion)*

*"17. **<u>Documents of which registration is compulsory</u>**.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:*

*(a)-(c) * * **

*(d) **<u>leases of immovable property from year to year, or for any term exceeding one year, or reserving an yearly rent</u>**;"*

***10. <u>The third interdict is contained in Section 49 of the Registration Act which speaks about the fatal consequence of non-compliance of Section 17 thereof</u>**. Section 49 reads thus:*

*"49. **<u>Effect of non-registration of documents required to be registered</u>**.—No document required by Section 17 or by any provision of the Transfer of Property Act, 1882, to be registered shall—*

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

*(c) **<u>be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered</u>**.*

Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of Section 53-A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument."

***<u>No endeavour was made by the counsel to obviate the said interdict with the help of the exemptions contained in the proviso</u>**.*

11. <u>The resultant position is insurmountable that so far as the instrument of lease is concerned there is no scope for holding that the appellant is a lessee by virtue of the said instrument. The Court is disabled from using the instrument as evidence and hence it goes out of consideration in this case, hook, line and sinker</u>

(vide Shantabai v. State of Bombay [AIR 1958 SC 532 : 1959 SCR 265] , Satish Chand Makhan v. Govardhan Das Byas [(1984) 1 SCC 369] and Bajaj Auto Ltd. v. Behari Lal Kohli [(1989) 4 SCC 39 : AIR 1989 SC 1806].

xxx xxx xxx

15. *Shri P. Krishnamoorthy, learned Senior Counsel contended that a lease need not necessarily be the corollary of such a situation as possession of the appellant could as well be permissive. We are unable to agree with the submission on the fact-situation of this case that the appellant's possession of the building can be one of mere permissive nature without any right or liabilities attached to it. When it is admitted that legal possession of the building has been transferred to the appellant there is no scope for countenancing even a case of licence. A transfer of right in the building for enjoyment, of which the consideration of payment of monthly rent has been fixed, can reasonably be presumed. Since the lease could not fall within the first paragraph of Section 107 it could not have been for a period exceeding one year. The further presumption is that the lease would fall within the ambit of residuary second paragraph of Section 107 of the TP Act.*

16. *Taking a different view would be contrary to the reality when parties clearly intended to create a lease though the document which they executed had not gone into the processes of registration. That lacuna had affected the validity of the document, but what had happened between the parties in respect of the property became a reality.* ***Non-registration of the document had caused only two consequences. One is that no lease exceeding one year was created. Second is that the instrument became useless so far as creation of the lease is concerned****. Nonetheless the presumption that a lease not exceeding one year stood created by conduct of parties remains unrebutted.*

xxx xxx xxx"

(Emphasis Supplied)

39. Likewise, holding that contents of an unregistered agreement for lease were inadmissible in evidence, the Supreme Court in the case of ***Paul Rubber Industries Private Limited Versus Amit Chand Mitra and Another***[9], held as follows:

"xxx xxx xxx

[9] (2024) 13 SCC 219.

15. ***The appellant has argued that the trial court had admitted the lease agreement in evidence, and for determining the purpose of lease, we can examine the deed. But this argument is flawed. This provision contemplates lease for manufacturing purpose, in absence of contract or local law to the contrary, shall be deemed to be year-to-year lease. In that case, it would require six months' notice for termination. But here, the agreement itself provides a five-year duration, and hence ex facie becomes a document that requires compulsory registration. That is the mandate of Section 107 of the 1882 Act and Sections 17 and 49 of the 1908 Act. The Court cannot admit it in evidence****, as per the judgment in Anthony [Anthony v. K.C. Ittoop & Sons, (2000) 6 SCC 394]. A coordinate Bench in Shyam Narayan Prasad v. Krishna Prasad [Shyam Narayan Prasad v. Krishna Prasad, (2018) 7 SCC 646 : (2018) 3 SCC (Civ) 702] has reaffirmed this view, referring to Section 49 of the Registration Act.* ***This is a prohibition for the Court to implement and even if the trial court has taken it in evidence, the same cannot confer legitimacy to that document for being taken as evidence at the appellate stage. The parties cannot by implied consent confer upon such document its admissibility****. It is not in dispute in this case that the period between service of notice and institution of the suit fell short by four days of completion of six months. In any case, we do not consider it necessary to address this question as in our opinion, the requirement to give six months' notice does not arise in this case. That point has not been raised before us.*

xxx xxx xxx

18. In Sevoke Properties [Sevoke Properties Ltd. v. W.B. State Electricity Distribution Co. Ltd., (2020) 11 SCC 782] a coordinate Bench opined that ***as the agreement for lease in that case was unregistered, contents of the instrument were inadmissible in evidence.*** *There was admission in the written statement of the respondent in Sevoke Properties [Sevoke Properties Ltd. v. W.B. State Electricity Distribution Co. Ltd., (2020) 11 SCC 782] by the defendants that they were in occupation under the lease agreement (in controversy in that case) for a period of fifteen years with effect from 1981 and that period of lease had expired on 24-5-1996. The issue decided in that case was whether the lease stood determined by efflux of time and once it did, what would be the position of the lessee? The coordinate Bench found that the position of the lessee would be that of a tenant at sufferance. In that context, it was held that there was no necessity to terminate the lease under Section 106 of the 1882 Act. That case was decided on the basis of admission in written statement and has no application to the facts of the present case. The observation made in Sevoke Properties [Sevoke Properties Ltd. v.*

W.B. State Electricity Distribution Co. Ltd., (2020) 11 SCC 782] that only purpose for which the lease can be looked at for assessing nature and character of the possession was in that context and that judgment proceeded on the basis that the period of lease had expired on a certain date. This decision is not an authority for the proposition that nature and character of the possession in an unregistered lease deed could always constitute collateral purpose so that the court could examine the deed for that reason. The purpose for which lease is granted forms an integral part of the lease deed in this case and this very issue forms one of the main disputes.

xxx xxx xxx

21. In Satish Chand Makhan [Satish Chand Makhan v. Govardhan Das Byas, (1984) 1 SCC 369], another coordinate Bench of this ***Court declined to accept admissibility of an unregistered lease agreement for determining duration of the lease (9 years in that case) on the reasoning that terms of lease would not constitute collateral purpose. It was observed in this judgment that "nature and character of possession" could constitute collateral purpose but that was not the point which was directly in lis before this Court. In our opinion, nature and character of possession contained in a flawed document (being unregistered) in terms of Section 107 of the 1882 Act and Sections 17 and 49 of the Registration Act can form collateral purpose when the "nature and character of possession" is not the main term of the lease and does not constitute the main dispute for adjudication by the court.*** *In this case, the nature and character of possession constitutes the primary dispute and hence the Court is excluded by law from examining the unregistered deed for that purpose. In respect of the suit out of which this appeal arises, purpose of lease is the main lis, not a collateral incident.*

xxx xxx xxx"

(Emphasis Supplied)

40. In the present case also, the Rent Agreement being unregistered, even though taken into evidence in the Trial Court, cannot confer legitimacy to the document for it to be looked into as evidence at the appellate stage. It is settled law that unregistered lease agreement is inadmissible in evidence in view of Section 49 of the Registration Act, except for the collateral purpose of proving the nature and character of possession by a party. (***See: Satish***

Chand Makhan and Others Versus Govardhan Byas and Others[10]). As per Section 49 of the Registration Act, 'collateral purpose' implies that content of an unregistered document can be used for purpose other than for which it has been executed or entered into by the parties. Thus, in the present case, though the landlord-tenant relationship between the parties can be established by the evidence and the pleadings on record, this Court cannot look into the terms/clauses of the Rent Agreement dated 26th June, 2001, as the same is unregistered.

41. Accordingly, considering that the Rent Agreement is unenforceable in light of its non-registration, the alleged Undertaking purportedly envisaging resumption of tenancy created under the Rent Agreement and on the same terms as the Rent Agreement, is also impermissible.

42. The respondent no.1 has raised the objection as to admissibility of the Rent Agreement at the appellate stage. Since the said objection pertains to the document itself being inadmissible in law, and not in regard to the mode of proof of document, the said objection at this stage is sustainable in law. Thus, holding that merely because a document has been marked as an 'exhibit', objection as to its admissibility is not excluded, and is available to be raised even at a later stage or even in appeal or revision, the Supreme Court in the case of ***R.V.E. Venkatachala Gounder Versus Arulmigu Viswesaraswami & V.P. Temple and Another***[11], held as follows:

> *"xxx xxx xxx*
>
> ***20.*** *The learned counsel for the defendant-respondent has relied on Roman Catholic Mission v. State of Madras [AIR 1966 SC 1457] in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We*

[10] (1984) 1 SCC 369.
[11] (2003) 8 SCC 752.

do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. ***Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision.*** *In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the latter case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence.* ***In the first case, acquiescence would be no bar to raising the objection in a superior court****.*

xxx xxx xxx"

(Emphasis Supplied)

43. Likewise, holding that objections regarding admissibility of

documents, which are *per se* inadmissible, can be taken even at the appellate stage, as these are fundamental issues, Supreme Court in the case of ***Sonu alias Amar Versus State of Haryana***[12], held as follows:

> *"xxx xxx xxx*
>
> ***32.*** *It is nobody's case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency.* ***It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue****. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

44. Considering the detailed discussion hereinabove, it is clear that the appellants have failed to establish the execution of the alleged Undertaking, *Ex. PW1/F*. The submission made of behalf of the appellants that since the respondent no.1 herein admitted his signatures on the document, *Ex. PW1/F*,

[12] (2017) 8 SCC 570.

the burden shifted on respondent no.1 to disprove the document, cannot be accepted. The said aspect has been dealt in detail in the preceding paragraphs. Further, the law is very clear in this regard that the appellants, being plaintiffs in the suit, had to prove their case and had to stand on the strength of their own case. Thus, it was for the appellants to prove the execution of the Undertaking, *Ex. PW1/F*, on its strength in accordance with law, which the appellants failed to do. In this regard, reference may be made to the judgment of this Court in the case of ***Devender Bhati Versus Chander Kanta***[13], wherein, it has been held as follows:

> *"xxx xxx xxx*
>
> ***37. In Harish Mansukhani (supra), the Division Bench noticed that the plaintiff has to prove his case and had to stand on his own legs. Similarly, in Ganpatlal (supra), the Madhya Pradesh High Court took note of the elementary rule of civil litigation in this country that the plaintiff must stand or fall on the strength of his own case****. Thus, the failure of the defendant to establish that the market monthly rent of the suit property was not Rs. 5,000/- p.m., by itself, would not amount to a proof of the plaintiffs claim of damages of Rs. 5,000/- p.m.*
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

45. In view of the detailed discussion hereinabove, the findings of the learned Trial Court on issues *(vi)* to *(viii)*, as rendered together by the learned Trial Court, and challenged before this Court by way of the present appeal, are upheld. This Court finds the decision of the learned Trial Court to be cogent and based on the evidence and documents on record. Therefore, this Court would not interfere with a well reasoned judgment of the Trial Court.

46. The fact that the Trial Court has returned a finding that the respondent

[13] 2015 SCC OnLine Del 14224.

no.1 failed to prove that he had returned the amount of Rs. 3.40 lakhs towards security deposit to the appellants, upon vacation of the suit shop, has no bearing on the final conclusion of the Trial Court, as re-affirmed by this Court. Thus, the appellants are at liberty to seek recovery of the said amount from the respondent no.1, in accordance with law.

47. In view of the detailed discussion hereinabove, no merit is found in the present appeal. The same is accordingly dismissed.

MINI PUSHKARNA
(JUDGE)

DECEMBER 15, 2025/AK/KR