



2024:DHC:10054



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

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RSA 201/2024, CM APPLs. 70227/2024, 70228/2024, 70230/2024
& 70231/2024**

Between: -

PRINCE

S/O JAWAHAR LAL,
R/O SHOP NO. 4B/4, GROUND
FLOOR, CH. KISHAN CHAND
COMPLEX, 4, JAWALAHERI,
PASCHIM VIHAR, NEW DELHI – 110063

ALSO REPRESENTS

THE ESTATE OF LATE CHUNNI LAL,
BEING JOINT TENANT OF SHOP NO.
4B/4, GROUND FLOOR, CH. KISHAN
CHAND COMPLEX, 4, JAWALAHERI,
PASCHIM VIHAR, NEW DELHI – 110063

.....APPELLANT-
DEFENDANT

(Through: Mr.N.Prabhakar Tejaswita and Mr.Rommel Khan, Advs.)

AND

MOHINDER YADAV

S/O LATE KISHAN CHAND,
R/O 94B, JWALAHERI, PASCHIM
VIHAR, NEW DELHI – 110063

.....RESPONDENT-PLAINTIFF



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(Through: Mr.Chirag Alagh and Mr.Deepanshu, Advs.)

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Reserved on: 05.12.2024

Pronounced on: 24.12.2024

J U D G M E N T

The instant Second Appeal has been preferred by the original defendant challenging the judgment and decree dated 12.07.2024, passed by the learned District Judge – 04, Tis Hazari Courts, Delhi, in RCA No. 26 of 2023, titled as “*Mohinder Yadav vs. Prince & Anr*”, setting aside the judgment and decree dated 21.03.2023 passed by the learned Civil Judge-01, West, Tis Hazari Courts, Delhi. The Trial Court dismissed the suit of the respondent-plaintiff, however, the appellate Court decreed the same. Therefore, the appellant-defendant is in the instant appeal.

2. The facts, as discerned from the record, reveal that the respondent-plaintiff is the owner and landlord of the property bearing No. 4 B/4, Ground Floor, Ch. Kishan Chand Complex, 4, Jwalaheeri, Paschim Vihar, New Delhi-63 [hereinafter referred to as the “suit property”].

3. The controversy in the present second appeal revolves around whether the acceptance of rent by the respondent-plaintiff post-December 2021 led to the creation of a new statutory tenancy under Section 116 of the Transfer of Property Act, 1882 [hereinafter referred to as “TPA”]. Whether the notice dated 13.12.2021, purporting to terminate the lease, could validly serve as the basis for the eviction suit, especially in light of the alleged statutory or fresh lease created thereafter. Lastly, the appellant-defendant contests the eviction decree passed by the first Appellate Court on the thrust that the



decree was rendered without the respondent-plaintiff terminating the alleged fresh lease purportedly created under Section 116 of the TPA.

4. Mr. N. Prabhakar Tejaswita, learned counsel appearing on behalf of the appellant-defendant submits that the impugned Judgment dated 12.07.2024 passed by the first Appellate Court is untenable in the eyes of law.

5. Learned counsel further submits that the learned first Appellate Court failed to appreciate the factual matrix in its proper perspective. He contended that the conduct of the respondent-plaintiff in accepting rent for a period of six months following 31.12.2021 gave rise to a fresh tenancy protected under Section 116 of the Transfer of Property Act, 1882 [TPA]. He argues that the notice of eviction dated 13.12.2021, purporting to terminate the lease, could not serve as a valid basis for the eviction suit. This is especially so, he contends, in light of the statutory or fresh tenancy that allegedly arose post-December 2021 when the respondent-plaintiff, by accepting rent and assenting to the continued possession of the suit property by the appellant-defendant, effectively created a new tenancy protected under Section 116 of the TPA.

6. Learned counsel further submits that the earlier compromise statement dated 03.04.2019 in Civil DJ No. 921/2018 did not provide for any option of renewal. In the absence of any subsequent agreement to the contrary, the continued acceptance of rent by the respondent-plaintiff, including the enhanced rent as envisaged under the compromise statement dated 03.04.2019, clearly brings the doctrine of holding over into operation.



7. He asserts that the conduct of the respondent-plaintiff demonstrates that they never treated the tenancy as being merely from month to month in nature. Moreover, the respondent-plaintiff voluntarily waited until the enhanced rent began from April 2022, effectively allowing a new tenancy to be created under the doctrine of holding over, prior to initiating the eviction suit.

8. According to the learned counsel, the first Appellate Court erred in failing to consider that the pleadings of the parties do not support the conclusion that the possession of the suit property by the appellant-defendant was on a monthly tenancy basis. This is evident from the notice of the respondent-plaintiff dated 13.12.2023, which did not categorize the tenancy as month-to-month, and the eviction suit, wherein it was specifically stated that the tenancy had been renewed from time to time. Additionally, the appellant-defendant asserted in his pleadings that the tenancy was for three years with a 10% increment in rent thereafter, thereby contending that his right of tenancy was effectively perpetual under Section 107 of TPA.

9. While the appellant denied in his written statement that the tenancy was never formally renewed, the pleadings and conduct of both parties demonstrate that they understood the terms of the compromise statement dated 03.04.2019 as establishing that the tenancy was not on a month-to-month basis. Both parties acted upon the provision for a 10% increase in rent every three years, further corroborating the understanding that the tenancy carried terms beyond those of a mere monthly arrangement.

10. Assailing the validity of the judgment and decree rendered by the first Appellate Court on the ground that it failed to consider that the cause of



action claimed by the respondent-plaintiff was artificial and contrived, as evident from the evidence on record, which was not properly appreciated, learned counsel submits that the cause of action, as pleaded by the respondent-plaintiff in the original dispute where settlement was arrived at, is based on two crucial aspects. Firstly, the settlement of disputes between the parties on 01.04.2019 in Civil DJ 921/2018, which outlined the terms of tenancy, and secondly, the alleged default in rent payment for two consecutive months from 01.12.2021, which purportedly triggered the right of the respondent-plaintiff to terminate the tenancy.

11. Learned counsel submits that the respondent-plaintiff claims that the cause of action continued through subsequent dates, specifically the issuance of a notice of termination on 13.12.2021, its receipt on 16.12.2021, and the response of the appellant-defendant *via* email on 20.12.2021. He contends that this chain of events indicates a deliberate attempt to manufacture the cause of action to sustain the eviction suit, and this critical aspect was overlooked by the first Appellate Court.

12. On equity, the learned counsel for the appellant-defendant submitted that it is an undisputed fact that the appellant-defendant had not paid rent for a consecutive period of two months, namely November and December 2021. However, he emphasized that this default was the result of an inadvertent human error and not an intentional act or an attempt to avoid any obligations or statements previously made by the appellant. He argued that the unintentional nature of the default should have been considered as a mitigating factor in deciding the case, particularly in light of the appellant-



defendant's subsequent actions to rectify the error promptly upon receiving notice of termination.

13. I have heard the learned counsel for the parties and have perused the record.

14. The facts gleaned from the record reveal that the appellant-defendants were initially inducted as tenants in the suit property by the respondent-plaintiff. However, disputes arose, prompting the respondent-plaintiff to institute a suit for possession, recovery of damages, mesne profits, and mandatory and permanent injunction, bearing Civil Suit No. D.J. 921/18, on 13.08.2018. Subsequently, on 03.04.2019, the parties amicably resolved the matter, and their respective statements were recorded. As per the settlement, the respondent-plaintiff recognized the appellant-defendants as tenants in the suit property with effect from 01.04.2019, at a monthly rent of ₹22,000/-, subject to a 10% increase every three years. The first such increment was to take effect from 01.04.2022.

15. As a part of the settlement between the parties, it was agreed that the respondent-plaintiff would have the liberty to initiate legal proceedings against the appellant-defendants if they default on rent payments for two consecutive months. Additionally, the parties agreed that the house tax to the MCD for the suit property would be borne by the respondent-plaintiff, while the conversion charges would be borne by the appellant-defendants. Reciprocal statements were duly recorded to reflect these terms. It is evident from the above that the appellant-defendants were recognized as joint tenants of the suit property with effect from 01.04.2019, as per the settlement/compromise dated 03.04.2019 in Civil Suit No. 921/18, at a



monthly rent of ₹22,000/-, exclusive of other charges, with a provision for a 10% rent increase every three years. This tenancy arrangement was renewed periodically. Furthermore, the settlement expressly permitted the respondent-plaintiff to initiate legal proceedings in case of rent defaults for two consecutive months.

16. The appellant-defendants, who had been accepted as tenants of the suit property pursuant to a settlement dated 03.04.2019, complied with the agreed terms and paid rent only until October 2021. Thereafter, the appellants defaulted on payment of rent for the months of November and December 2021, thereby breaching the settlement terms. Consequently, the respondent-plaintiff issued a notice dated 13.12.2021, received by the appellants on 16.12.2021, terminating the tenancy and directing them to vacate the premises by midnight of 31.12.2021 - 01.01.2022, while also demanding payment of the arrears of rent. In their reply dated 20.12.2021, the appellant-defendants asserted that the rent for the disputed months had been initially transferred *via* RTGS but was returned due to clerical errors and was subsequently re-sent on 20.12.2021. However, despite the termination of tenancy through a valid notice and the respondent-plaintiff's demand for vacant possession, the appellants failed to vacate the premises. Consequently, the respondent initiated the present suit for possession of the suit property.

17. The learned Trial Court, while considering the dispute between the parties observed that waiver of forfeiture will apply only when rent is accepted by the landlord. The relevant test is the intention of the landlord. After non-payment of rent for two months, the landlord immediately sent the



legal notice of termination of the lease to the defendants. The defendants paid the arrears on 20.12.2021, after receipt of the notice. The relevant test for waiver of forfeiture is the intention of the landlord to continue the tenancy of the tenants. The filing of the present suit shows that the intention of the landlord was to evict the defendants on default of rent for two months. The contention that the plaintiff did not protest on receipt of arrears is without merit as arrears were sent *via* RTGS and the plaintiff is not bound to formally send a letter of protest to the defendants. Filing of the present suit is enough that arrears were not accepted by the plaintiff.

18. The learned Trial Court, while adjudicating the dispute, held that the principle of waiver of forfeiture is contingent upon the intention of the landlord, which is manifested through the acceptance of rent after a default. The Court observed that following the non-payment of rent by the appellant-defendant for two consecutive months [November and December 2021], the landlord promptly issued a legal notice dated 13.12.2021, terminating the lease. It was noted that the appellant-defendants remitted the arrears of rent on 20.12.2021, only after receiving the termination notice. Rejecting the contention of the appellant-defendant that the respondent-plaintiff has not protested the receipt of arrears, the Court held that the critical test for determining waiver of forfeiture is whether the landlord demonstrated an intention to continue the tenancy despite the breach. The initiation of the present suit for possession, the Trial Court observed, is a clear reflection of the intent of the landlord to evict the defendants due to their default. The filing of the suit itself was deemed sufficient evidence that the arrears were not accepted with an intention to waive the termination of tenancy.



19. However, considering the overall factual matrix, the learned Trial Court, while acknowledging the default on the part of the defendants, exercised its discretion to grant the defendants an opportunity to rectify their fault rather than ordering immediate eviction, a benefit under Section 114 of TPA. The Court noted that the defendants, upon receiving the notice of termination, promptly remitted the arrears of rent to the plaintiff and had also deducted TDS for the months of November and December, indicating *bona fide* intent. The Court further observed that the defendants had been long-term tenants in the premises of the respondent-plaintiff, which merited a chance for rectification. Accordingly, the Trial Court imposed a condition for the appellant-defendants to pay costs of ₹20,000/- to the respondent-plaintiff within a week, which if violated, would automatically allow the eviction application.

20. Aggrieved by the decision of the learned Trial Court, the respondent-plaintiff filed a regular first appeal under Section 96 of the Code of Civil Procedure, 1908 [hereinafter referred to as “CPC”]. In the first appeal, the respondent-plaintiff contended that the relief provided under Section 114 of the TPA, which pertains to the forfeiture of a lease, is applicable only in cases where the lease agreement between the parties is for a fixed term. However, in the instant case, the tenancy between the parties was on a month-to-month basis, and therefore, the relief under Section 114 would not apply. The respondent-plaintiff contended that the Court is bound to decree the suit for eviction once the essential prerequisites are satisfied. These prerequisites include the existence of a landlord-tenant relationship, the rent exceeding ₹3,500 per month [thereby excluding the applicability of the



Delhi Rent Control Act], and the service of a valid termination notice under Section 106 of the Act. He placed reliance on the decision in the case of ***Hans Raj v. Bhajan Singh***¹ to substantiate the argument that once these elements are met, the Court lacks discretion to deny the eviction decree.

21. The appellant-defendants have submitted that the tenancy in the instant case was of perpetual in nature and the benefit granted under Section 114 of TPA is the discretion of the Court. To substantiate their position, the appellant-defendants have placed reliance on various decisions rendered in the cases of ***R.S. Lala Praduman Kumar v. Virendra Goyal***², ***Anthony v. K.C. Ittoop & Sons***³, ***Biswabani (P) Ltd. v. Santosh Kumar Dutta***⁴ and ***Overnite Express Ltd. v. Kanwar Singh Pradhan***⁵.

22. The first Appellate Court has observed that the lease deed is on a month-to-month basis and therefore, the law laid down in ***Hans Raj v. Bhajan Singh*** is applicable and in terms of Section 116 of the TPA, the tenancy can be terminated by a notice of 15 days. The first Appellate Court noted that the notice issued by the respondent-plaintiff was for both claiming the arrears of the rent as well as the possession of the suit property.

23. Considering the factual matrix, the learned first Appellate Court, while elucidating the law and relying on various decisions rendered by this Court and the Supreme Court, noted that even though the appellant-plaintiff served a notice of termination under Section 106 of the TPA, any contention regarding the insufficiency of such notice becomes inconsequential upon the

¹ 2010 SCC OnLine Del 4565

² (1969) 1 SCC 714

³ (2000) 6 SCC 394

⁴ (1980) 1 SCC 185



filing of the suit for eviction. The first appellate Court observed that filing the eviction suit serves as sufficient notice to terminate the tenancy under the established legal principles.

24. The first Appellate Court further reasoned that an alternative interpretation, that the notice was insufficient, would effectively negate the rights of landlords to terminate month-to-month tenancies. Such an interpretation would essentially confer a perpetual tenancy upon tenants unless they commit a default in paying rent, contrary to the requirements of Section 111(h) of TPA, which mandates that the month-to-month tenancies can only be terminated by notice or mutual agreement. The Appellate Court found the reasoning of the learned Trial Court to be flawed with respect to the application of Section 114 of the Act. Citing the judgment in **Hans Raj**, it held that Section 114, which provides relief against forfeiture, was inapplicable in this case, particularly given the absence of a fixed-term lease and the existence of a validly terminated month-to-month tenancy. Accordingly, the appellate Court reversed the findings of the Trial Court and decreed the eviction.

25. The first Appellate Court, while relying on the judgment rendered in **Ashok Kumar Bagga v. Rajvinder Kaur**⁶, outlined the essential parameters for a decree of possession against a tenant. It observed that a landlord seeking such a decree must establish the following:-

1. The existence of a landlord-tenant relationship.
2. That the tenancy is not a protected tenancy under the Delhi Rent Control Act, 1958.

⁵ 2017 SCC OnLine Del 7866

⁶ 2021 SCC OnLine Del 2785



3. The absence of a registered, subsisting lease agreement.
4. That the tenancy has been validly terminated, and the tenant has failed to surrender possession.

26. Upon a thorough evaluation of the pleadings, evidence, and material on record, the first Appellate Court held that all the above conditions were fulfilled in the present case. The respondent-plaintiff had successfully terminated the tenancy and proved that the tenancy did not fall under the protective ambit of the Delhi Rent Control Act. The Court further noted that no registered lease agreement was in subsistence, and the defendants had failed to vacate the premises despite the termination notice.

27. Accordingly, the first Appellate Court found no triable issue and allowed the application of the respondent-plaintiff under Order XII Rule 6 of the Code of Civil Procedure, decreeing the suit for possession. The judgment and decree dated 21.03.2023, passed by the learned Trial Court, were set aside, and the respondent-plaintiff was granted possession of the suit property.

28. Examining the aforesaid, it is seen that the first Appellate Court has rightly relied on the decision of the Supreme Court in the case of **Ashok Kumar Bagga**, and the submissions advanced by the appellant-defendant are already squarely covered under the principles of the said decision.

29. Upon a thorough examination of the findings rendered by the learned Trial Court and the first Appellate Court, as well as the documents admitted in evidence, this Court is of the considered opinion that there is no material perversity or error apparent in the decisions of the appellate Court. The findings are well-reasoned and based on a holistic interpretation. The



Supreme Court, in ***Chandrabhan v. Saraswati***⁷, has elucidated the scope of a second appeal under Section 100 of the CPC. It held that the test for determining whether a question of law is “*substantial*” involves assessing whether the question is of general public importance or whether it directly and substantially affects the rights of the parties. Furthermore, if the question has already been conclusively settled by binding precedent or involves the mere application of well-settled principles, it cannot be treated as a substantial question of law. Questions that are palpably absurd or lack any legal merit also do not qualify as substantial questions of law.

30. To qualify as *substantial*, a question of law must be one that is open to genuine debate, unsettled by existing legal principles or binding precedents, and significantly impacts the determination of the case with respect to the rights of the parties. For a question to be deemed as “involved in the case,” it must have a firm basis in the pleadings and should naturally arise from the factual findings established by the Courts of fact. Furthermore, it must be essential to resolve the said question to arrive at a just and proper decision. The ultimate consideration remains a balance between ensuring justice at all stages of the legal process and avoiding unnecessary prolongation of the litigation. The relevant portion of the said decision reads as under:-

*“27. The guidelines to determine what is a substantial question of law within the meaning of Section 100 CPC has been laid down by this Court in Sir Chunnilal V. Lal Mehta & Sons v. Century Spinning and Manufacturing Co. Ltd.”*⁴

28. In Sir Chunnilal V. Mehta and Sons (supra), this Court agreed with and approved a Full Bench judgment of the Madras High Court

⁷ 2022 SCC OnLine SC 1273



in *Rimmalapudi Subba Rao v. Noony Veeraju*⁵ which laid down the principles for deciding when a question of law becomes a substantial question of law.

29. In *Hero Vinoth v. Seshammal*⁶, this Court followed *Sir Chunilal v. Mehta & Sons (supra)* and other judgments and summarized the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

30. The relevant paragraphs of the judgment of this Court in *Hero Vinoth (supra)* are set out herein below:-

*“21. The phrase “substantial question of law”, as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying “question of law”, means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In *Guran Ditta v. Ram Ditta (1927-28) 55 IA 235 : AIR 1928 PC 172*] the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314]* the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. Noony Veeraju [AIR 1951 Mad 969: (1951) 2 Mad LJ 222 (FB)] : (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314], SCR p. 557)**

“[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to



the particular fact of the case it would not be a substantial question of law.”

31. The proper test for determining whether a question of law raised in the case is substantial would be, whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this Court. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or the question raised is palpably absurd, the question would not be a substantial question of law.

32. To be ‘substantial’, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case” there must be first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See Santosh Hazari v. Purushottam Tiwari⁷).

33. The principles relating to Section 100 of the CPC relevant for this case may be summarised thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal



principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

31. Applying the aforementioned principle, it becomes evident that the issues raised in the present appeal are predominantly factual or involve the straightforward application of well-settled legal principles to the facts of the case as determined by the Courts below. As such, no substantial question of law arises for consideration by this Court. Thus, the legal position on the subject is clear, i.e. a second appeal under Section 100 of the CPC is maintainable solely on the basis of a substantial question of law and not on factual issues.

32. The Supreme Court in the case of **Balasubramanian v. M. Arockiasamy**⁸, placing reliance on **Ramathal v. Maruthathal**⁹ and **Ram Daan v. Urban Improvement Trust**¹⁰ held that when both the lower Courts have arrived at concurrent findings of fact and disbelieved the evidence of

⁸ (2021) 12 SCC 529

⁹ (2018) 18 SCC 303



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certain witnesses, interference by the High Court in a second appeal is generally unwarranted. However, the Court clarified that this restraint on interference is not absolute. Where findings are perverse, lack evidentiary support, or the appreciation of evidence suffers from material irregularity, the High Court may justifiably intervene on questions of fact. However, in the present case, the appellant-defendant has not demonstrated any material irregularity or perversity in the findings of the Courts below as gleaned from the arguments and the material shown.

33. In view of the aforesaid, the Court does not find any substantial questions of law to have arisen in the instant case. Consequently, the instant appeal fails and stands dismissed, along with the pending application.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 24, 2024/sp

¹⁰ (2014) 8 SCC 902