PARAMOUNT TITLE HOLDER

By: S.U.Khan, J.*

If a person in possession who is not full owner but is entitled to let out the building, lets out the same and thereafter the full owner or better title holder asserts his right, the consequence which will follow has been described in *Vashu Deo v. Bal Kishan AIR 2002 SC 569* (paras 12 to 15) and *Om Prakash Gupta v. Ranbir B. Goyal AIR 2002 SC 665* (relying upon *Vashu Deo*).

In *Vashu Deo* tenant instituted suit for eviction against sub-tenant during pendency of which the original landlord instituted suit for eviction against tenant (i.e. landlord of sub- tenant). Thereupon the sub-tenant attorned in favour of original landlord and pleaded in the suit against him that his landlord i.e. the tenant was no more in picture hence suit must be dismissed. The Supreme Court negatived the plea and held that until decree of eviction was passed in favour of paramount title holder against landlord, the tenant remained liable to the landlord. Para 12 of *Vashu Deo,* supra, is quoted below:

> *"12. To constitute eviction by title paramount so as to discharge the obligation of the tenant to put his lessor into possession of the leased premises three conditions must be satisfied : (1) the party evicting must have a good and present title to the property; (ii) the tenant must have quitted or directly attorned to the paramount title holder against his will; (iii) either the landlord must be willing or be a consenting party to such direct attornment by his tenant to the paramount title holder or there must be an event, such as a change in law or passing of decree by a competent court, which would dispense with the need of*

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consent or willingness on the part of the landlord and so bind him as would enable the tenant handing over possession or attorning in favour of the paramount title holder directly, or, in other words, the paramount title holder must be armed with such legal process for eviction as cannot be lawfully resisted. The burden of raising such a plea and substantiating the same, so as to make out a clear case of eviction by paramount title holder, lies on the party relying on such defence."

In *Om Pakash,* supra, a premises constructed and thereafter allotted by Haryana Urban Development Authority (HUDA) was let out by the allottee to a tenant. The allottee initiated eviction proceedings against the tenant during pendency of which the Development Authority cancelled the allotment for non-payment of installments by the allottee and started resumption proceedings. The tenant sought to challenge eviction decree on that ground. The cancellation and resumption proceedings were sub judice. The Supreme Court held in para 10 as follows:

"10. For two reasons we do not think that the defendant-appellant is entitled to any relief and for setting aside of the decree for eviction. Firstly, there is neither any order of resumption and forfeiture within the meaning of Section 17 of the Act passed the HUDA against the respondent nor is there an allotment by HUDA directly in favour of the appellant in view of the order of the Estate Officer having been set aside by the Appellate Authority under the Act the allotment made by HUDA in favour of the respondent continues to subsist. His title, under which he had inducted the appellant in possession of the suit premises, has not come to an end. The triple test, laid down by this court in Vashu Deo's case is not satisfied.

Secondly, the appellant is placing reliance on an event happening after the institution of suit, i.e. a subsequent event and a case for taking notice of such subsequent event by court so as to impair the judgment under appeal is not made out."