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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Reserve: August 19, 2008
Date of Order: October 17, 2008

+ CM(M) 281/2007

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17.10.2008

Melanie Vass Simon & Ors.

...Petitioners

Through: Mr. V.P. Singh, Sr. Adv. with Mr. Atishi Dipankar, Advocates

Versus

Lina Kila Chand @ Lina Laila B

...Respondent

Through: Mr.A.K. Singla, Sr. Adv. with Mr. Rajesh Baweja, Advocates

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? **Yes.**
2. To be referred to the reporter or not? **Yes.**
3. Whether judgment should be reported in Digest? **Yes.**

JUDGMENT:

1. The petitioner is aggrieved by an order dated 21st November 2006 passed by the learned Civil Judge whereby learned Civil Judge dismissed an application of the plaintiff (petitioner herein) under Order 12 Rule 6 of CPC for passing a decree on the basis of admissions of defendants.

2. The brief facts relevant for the purpose of deciding this petition are that the petitioner filed a suit for ejectment against Shri Bhag Israni to whom the property was let out on monthly rent of Rs.5000/- started from 1.8.1980. The tenancy of the tenant was terminated by an ejectment notice dated 16th January 1989 given by the landlord asking the tenant to hand over the

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possession of the premises on the expiry of midnight of 28th February 1989 i.e. 1st March 1989. This notice was duly received and replied by the defendant (respondent herein) through an advocate on 30th January, 1989 stating therein that the notice was not valid and proper. On refusal of the defendant to vacate the premises, the plaintiff filed a suit against Mr. Bhag Israni. However, Mr. Bhag Israni expired on 19th March 1988 and after his death, the present respondent Ms. Lina Kila Chand was impleaded as a defendant. During proceedings before the trial court, an application under Order 12 Rule 6 CPC was filed on behalf of the petitioner contending that in view of the unequivocal admission made on the part of the defendant regarding rent being above Rs.3500/-, termination of tenancy by a notice which was duly received, there was no impediment in passing a decree of possession in favour of the petitioner and prayed accordingly. The defendant contested the application on the ground that the plaintiff No.4 [Mr. Jay Randolph Vass] who was the co-owner to the extent of 1/12th share in the suit property had executed a valid power of attorney and other documents in favour of the defendant qua his share in the suit property. It was also contended that the plaintiff No.4 also withdrew the power of attorney drawn in favour of the person who signed the plaint on his behalf and he was no longer interested in getting the premises vacated from the defendant and hence there was lack of a common intention among the plaintiffs. It was further argued that the rent of the premises cannot be considered as Rs.5000/- since there were many co-owners of the premises and the rent has to be divided among each of the co-owners. Therefore, the tenanted premises was covered under Delhi Rent Control Act (DRC Act). The legality and validity of authorization on behalf of the plaintiff No.1,2 and 3 in favour of the applicant was also challenged. It was argued that one of the co-lessor on his

own choice and pleasure cannot evict a tenant unless he represents other co-lessors also. The learned Civil Judge after examining the contentions of both sides came to conclusion that it was the case of the plaintiffs that there was one tenancy at the rate of Rs.5000/- per month, therefore, commonness of the intention among all the lessors was a vital aspect. He further observed that the defendants have raised objections qua authorization on behalf of other co-owners showing a conflict of interest among the plaintiffs with respect to their common intention. The plaint as well as other documents were not signed by the plaintiffs and co-owners in person. He further observed that the defendant has denied the landlordship or the ownership of the plaintiffs. Though the trial court found that in written statement admission had been made qua rate of rent, service of termination notice, tendering of rent etc, but considered that other contentions raised triable issues and can be decided only after evidence. Accordingly, he rejected the application under Order 12 Rule 6 CPC.

3. It is argued by counsel for the petitioner that the trial court failed to exercise its jurisdiction vested in it. The trial court ignored the basic principle of law qua joint ownership of the premises. It is submitted that there was clear admission on the part of the tenant in respect of the rate of rent, receipt of notice, termination of tenancy, tendering of rent to the petitioner No.1 herein, recognizing the petitioner No.1 as the landlord and in view of these clear admissions, there was no reason that the application under Order 12 Rule 6 CPC should have been dismissed more so in view of settled legal position in respect of the right of a co-owner, there was no reason that the Civil Judge should have dismissed the application. The order of the learned Civil Judge was, therefore, without jurisdiction and suffered from material

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irregularity.

4. It is well settled proposition of law that a co-owner can file a suit for eviction of tenant in the property owned by several co-owners. The consent of other co-owners is assumed as taken unless it is shown that other co-owners were not agreeable to evict the tenant at the time when suit was filed. A mere subsequent disagreement of one of the co-owners would not affect the filing of the suit. The right which is accrued to the co-owner at a particular time cannot be taken away and the person cannot be non-suited because of the change of events or of hearts. This proposition of law was upheld by the Supreme Court in **India Umbrella Mfg. Co. v. Bhagabandei Agarwalis (2004) 3 SCC 178** wherein the Supreme Court observed as under:-

6. *Having heard the learned counsel for the parties we are satisfied that the appeals are liable to be dismissed. It is well settled that one of the co-owners can file a suit for eviction of a tenant in the property generally owned by the co-owners. (See: Sri Ram Pasricha Vs. Jagannath & Ors., (1976) 4 SCC 184; Dhannalal Vs. Kalawatibai & Ors., (2002) 6 SCC 16, para25). This principle is based on the doctrine of agency. One co-owner filing a suit for eviction against the tenant does so on his own behalf in his own right and as an agent of the other co-owners. The consent of other co-owners is assumed as taken unless it is shown that the other co-owners were not agreeable to eject the tenant and the suit was filed in spite of their disagreement. In the present case, the suit was filed by both the co-owners. One of the co-owners cannot withdraw his consent midway the suit so as to prejudice the other co-owner. The suit once filed, the rights of the*

parties stand crystallised on the date of the suit and the entitlement of the co-owners to seek ejectment must be adjudged by reference to the date of institution of the suit; the only exception being when by virtue of a subsequent event the entitlement of the body of co-owners to eject the tenant comes to an end by act of parties or by operation of law."

5. Where a property subject matter of the eviction proceedings is owned by several co-owners, each of the coowner owns entire tenanted property along with others and it cannot be said that he was only a part owner or a fractional owner of the property, so long as the property has not been partitioned. The contention of the respondent/tenant that there were several owners of the property and, therefore, the rent of the property could not have been considered as Rs.5000/- or that the property was covered under Delhi Rent Control act is a baseless contention. Though this contention was rejected by the trial court, but it was again raised before this Court. When a property is jointly owned and there had been no partition of the property, the ownership is one and the tenancy qua a single tenant in such a property is also one. The Supreme Court in ***Dhannalal v. Kalawatibai (2002) 6 SCC 16*** considered this issue and observed as under:-

"16. It is well settled by at least three decisions of this Court, namely, Sri Ram Pasricha v. Jagannath (1976) 4 SCC 184, Kanta Goel v. B.P. Pathak (1977) 2 SCC 814 and Pal Singh v. Sunder Singh (1989) 1 SCC 444, that one of the co-owners can alone and in his own right file a suit for ejectment of the tenant and it is no defence open to the tenant to question the maintainability of the suit on the ground that the other co-owners were not joined as

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parties to the suit. When the property forming the subject-matter of eviction proceedings is owned by several owners, every co-owners owns every part and every bit of the joint property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property so long as the property has not been partitioned. He can alone maintain a suit for eviction of the tenant without joining the other co-owners if such other co-owners do not object. In Sri Ram Pasricha case reliance was placed by the tenant on the English rule that if two or more landlords institute a suit for possession on the ground that a dwelling house is required for occupation of one of them as a residence the suit would fail; the requirement must be of all the landlords. The Court noted that the English rule was not followed by the High Courts of Calcutta and Gujarat which High Courts have respectfully dissented from the rule of English law. This Court held that a decree could be passed in favour of the plaintiff though he was not the absolute and full owner of the premises because he required he premises for his own use and also satisfied the requirement of being "if he is the owner.", the expression as employed by Section 13(1) (f) of the W.S. Premises Tenancy Act, 1956."

(Emphasis added)

6. Similar view was taken in subsequent decision by the Supreme Court in Mohinder Prashad Jain v. Manohar Lal Jain (2006) 2 SCC 724.

7. A perusal of record would show that the original tenant had been paying rent to one Shri J.M. Shrinagesh and after the death of Shri J.M. Shringesh, Mrs. Melanie Vass Simon (petitioner No.1 herein) was accepted as

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the landlord and the tenant started paying rent to Mrs. Melanie Vass Simon. There are admissions on record on the part of the original tenant in the form of reply to the notice as well as in the written statement to the effect that he was a tenant on a monthly rent of Rs.5000/- and he was paying rent to Mrs. Melanie Vass Simon. The receipt of legal notice dated 16th January 1989 terminating the tenancy is admitted because this notice was duly replied by the tenant. It is settled proposition of law that once the tenant has attorned in favour of the landlord, subsequently the tenant cannot deny the title of the landlord keeping in view Section 116 of the Evidence Act, 1872 which provides for doctrine of tenant's estoppels against the tenant. The Supreme Court in **Sri Ram Pasricha v. Jagannath, (1976) 4 SCC 184** wherein the Supreme Court observed as under:-

"14. There are two reasons for our not being able to accept the above submission. Firstly, the plea pertains to the domain of the frame of the suit as if the suit is bad for non-joinder of other plaintiffs. Such a plea should have been raised, for what it is worth, at the earliest opportunity. It was not done. Secondly, the relation between the parties being that of landlord and tenant, only the landlord could terminate the tenancy and institute the suit for eviction. The tenant in such a suit is stopped from questioning the title of the landlord under section 116 of the Evidence Act. The tenant cannot deny that the landlord had title to the premises at the commencement of the tenancy. Under the general law, in a suit between landlord and tenant the question of title to the leased property is irrelevant. It is, therefore, inconceivable to throw out the suit on account of non-pleading co-owners as such."

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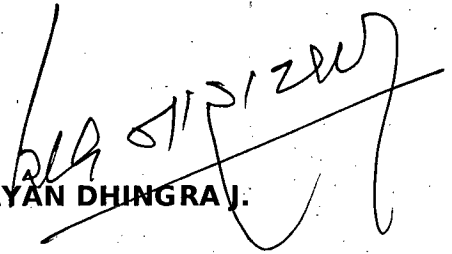
8. In order to allow an application under Order 12 Rule 6 CPC in case of possession of tenanted premises on the basis of admissions, the Court has only to see if the relationship of the tenant and landlord was admitted, the rent was above Rs.3500/-, the tenancy has been terminated by way of legal notice giving 15 days clear time to the tenant [tenancy being month to month]. In this case, all the three contentions are satisfied. It is not disputed that the tenancy was month to month and the rent was above Rs.35,00/-. The tenancy was, therefore, beyond the purview of the DRC Act. This tenancy was terminated by a notice dated 16th January 1989 and more than 15 clear days time was given to the tenant and the tenant was asked to vacate the premises by midnight of 28th February 1989. The receipt of notice is admitted because the notice was duly replied by the tenant on 31st January 1989 itself. In view of these admissions having come on record and in view of the law clearly laid down in respect of the co-owners, there was no reason that the trial court should have dismissed the application under Order 12 Rule 6 of CPC. The object and intent of Order 12 Rule 6 CPC is to enable a party to obtain a speedy judgment at least to the extent of the relief which is admitted by the defendant. The trial court cannot unduly narrow down the meaning of this Rule by importing such considerations which are not germane to the suit. Where a party has made clear admissions qua the above factors, the landlord/owner's right to take the possession back cannot be denied. A Division Bench of this Court in *ITDC Ltd. V. Chander Pal Sood & Son*, 84 (2000) DLT 337, held that where in the relationship of landlord and tenant, service of notice to terminate the tenancy, and the rate of rent @ Rs.5000 was admitted in the written statement, the trial court rightly passed the order under Order 12 Rule 6. This Court further held that the other plea raised in the written

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statement were not relevant and the clear and unequivocal admissions qua these factors was sufficient to pass a decree of possession.

9. I consider that the trial court did not exercise jurisdiction vested in it and committed material irregularity. I, therefore, allow this petition. The impugned order passed by court below is hereby set aside and the application under Order 12 Rule 6 CPC of the landlord/petitioner is hereby allowed. A decree of eviction of the premises bearing No.34, Vasant Marg, Vasant Vihar, New Delhi, is hereby passed. Parties are left to bear their own costs.

October 17, 2008
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SHIV NARAYAN DHINGRAJ.