

* **HIGH COURT OF DELHI : NEW DELHI**

RFA App. No.168/2009 & CM No.6687/2009

% Judgment reserved on: 22nd May, 2009

Judgment delivered on: 29th May, 2009

M/s. Cogent EMR Solutions Ltd.
Through its Managing Director
Having Registered office at
Cogent Matrix
E-41/4, Okhla Industrial Area, Phase-II,
New Delhi-110 020. Appellants

Through: Mr. Sanjiv Puri, Sr. Adv.
with Mr. Sonal Sinha
and Ms. Divya Jain,
Advs.

Versus

Shri. Virendra Kumar Sharma
S/o. PT. Durga Dass
R/o. Flat No.4, Meera Bai Polytechnic
Campus, Maharani Bagh,
New Delhi-110065. Respondents.

Through: Nemo.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA

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

V.B.Gupta, J.

Present appeal has been filed by appellant against the impugned order dated 15th April, 2009 passed by Additional District Judge, Delhi vide which suit filed by respondent for possession was decreed and it was also held that respondent is entitled to recovery of arrears of rent amounting to Rs.1,50,000/- and damages @ Rs.50,000/- p.m. till the possession of the suit is handed over to him. In addition, respondent was also entitled to interest @ 15% per annum, on the said amount, pendente lite and future till realization.

2. The case of respondent is that he has let out a part of premises constructed on Plot No.E-41/4 (Block-E), Okhla Industrial Area Phase-II, New Delhi at a monthly rent of Rs. 50,000/- to the appellant. Appellant made defaults in making payment of the rent as some of the cheques issued were dishonoured. Later on, he paid after repeated requests. Appellant did not make payment for the month of May, June and July, 2008 despite repeated requests and even after

service of legal notice dated 8th July, 2008 vide which the tenancy of appellant was terminated and he was directed to hand over the peaceful possession of the suit premises in question as well as payment of the due rent but he failed to do so.

3. Appellant is in unauthorized occupation of the premises in question w.e.f. 1st August, 2008 and as such he is liable to pay damages/mesne profits @ Rs.2 lacs p.m. w.e.f. 1st August, 2008, which is the prevailing rate of rent of such like premises in the area. A legal notice dated 6th August, 2008, to this effect was served upon the appellant but the same was not complied with.

4. In the written statement filed by the appellant, it is stated that appellant is taking every possible care that the rent is received by respondent on time. Respondent was and is ready and willing to pay the said rent for three months i.e. for May, June and July, 2008 and there is no violation of the lease deed.

5. Further, it is stated that appellant, vide letter dated 4th March and 2nd April, 2008, communicated to the respondent about the tariff violation issued by enforcement office of BSES Rajdhani Ltd. of Rs. 7.58 lacs for the period of September, 2006 to March, 2007. The appellant is not liable to pay any such amount, as the said demand does not pertain to the period of the lease of the appellant. The appellant approached this Court seeking quashing of the said demand of BSES.

6. It is denied that appellant is in unauthorized occupation of the premises w.e.f. 1st August, 2008 and as such he is not liable to pay damages/mesne profits. It is further stated that legal notice dated 6th August, 2008 was never received by respondent. Regarding notice dated 8th July, 2008, there is no specific denial.

7. It has been contended by learned counsel for the appellant that it was the respondent who refused to receive the rent. Appellant did not violate any

conditions laid down in the lease deed and as such termination of the lease deed is bad in law.

8. It is also contended that no legal notice has been received by the appellant and it is a matter of evidence as to whether the lease has been terminated in accordance with the provisions of law. It is further contended that, there has been no admission on the part of the appellant and as such, trial court ought not to have passed under Order 12 Rule 6 CPC.

9. It is also contended that as per lease deed, there is no termination clause and lease is valid till 4th June, 2013 and as such the impugned order passed by the trial court is contrary to law.

10. Learned counsel for the appellant, in support of its contention cited certain judgments of Supreme Court. In ***Manager, Reserve Bank of India, Bangalore v. S. Mani & Ors. (2005) 5 SCC 100***, it was held;

“Failure to prove a defence does not amount to an admission and nor does it reverse or discharge the burden of proof.”

11. ***In Balraj Taneja & Anr. v. Sunil Madan & Anr. (1999) 8 SCC 396***, it was held;

“Though a fact stated in the plaint may be treated as admitted, the Court may, in its discretion, still require such “admitted fact” to be proved otherwise than by such admission. This is an exception to the general rule of evidence that a fact which is admitted need not be proved.”

12. Next case is of this Court, ***Parivar Seva Sansthan v. Dr. (Mrs.) Veena Kalra & Ors. 86 (2000) DLT 817 (DB)***. In this case, principles laid down in ***Balraj Taneja (Supra)***, were followed.

13. Relationship of landlord-tenant between the parties, has been admitted by appellant.

14. There is no dispute about the rate of rent being Rs.50,000/- p.m.

15. Appellant does not dispute the arrears of rent @ 50,000/- p.m., which are due since May, 2008, as in the written statement, it is stated, that appellant is taking every possible care that the rent is received by respondent on time. It is also stated in the written statement, that appellant went to pay rent to the respondent, but respondent refused to accept the same, for reasons best known to him and appellant was and is ready and willing to pay rent for three months i.e. for May, June and July, 2008.

16. Thus, there is clear admission on the part of the appellant, that rent for the period May to July, 2008 is due. Now, it is May, 2009. There is nothing on record to show as to whether appellant had paid any rent w.e.f. May, 2008 till date.

17. The stand taken by appellant in the written statement is that BSES Rajdhani Ltd, had issued a demand of Rs.7.58 lacs for the period of September, 2006 to March, 2007, which the appellant is not liable

to pay, as this demand does not pertain to the period of lease.

18. In this regard, it may be pointed out that, appellant has already challenged that demand and has filed a petition in this Court. In those proceedings, the present respondent, has not been made as a party. Thus, this demand of Rs. 7.5 lacs, has got no bearing to the facts of the present case.

19. The only issue which remains for consideration is, as to whether any notice terminating the tenancy of the appellant was given by the respondent or not.

20. As per averments made in para 4 of the plaint, legal notice dated 8th July, 2008, was duly served upon the appellant, vide which the tenancy of the appellant was terminated.

21. There is no specific denial in the written statement to these averments.

22. Another legal notice dated 6th August, 2008 was also served upon the appellant, though appellant denied receipt of this notice.

23. Thus, it is clear from the written statement that, appellant does not deny the receipt of legal notice dated 8th July, 2008. It would be pertinent to point out, that appellant moved an application seeking amendment of written statement to this effect in the trial court, but that application was disallowed.

24. Coming to legal notice dated 6th August, 2008, the same has been duly served upon the appellant.

25. It would be fruitful to refer to the findings given by the trial court on this issue, which read as under;

“The record reveals that the plaintiff served a legal notice dated 6th August, 2008 on the defendant. Vide the said notice, the defendant was again called upon to vacate the premises in terms of the notice dated 8th July, 2008 and to pay the damages. The receipt of notice dated 6th August, 2008 was denied by the defendant. The said notice dated 6th August, 2008 was, however, served upon the defendant and was confirmed by the

postal authorities as delivered vide their certificate dated 18th December, 2008. The defendant, therefore, deliberately and falsely denied the receipt of the said notice. It is however evident and there is no doubt that the notice dated 6th August, 2008 was also duly served on the defendant on 7th August, 2008.

The plaintiff vide its notice dated 8th July, 2008 clearly conveyed that he was aggrieved by the defendant's illegal acts and did not want to continue the tenancy anymore and terminated the tenancy calling upon them to handover the peaceful possession on or before the midnight of 31st July, 2008. The defendant was also called upon to make the payment of due rent immediately with interest @ 15% per annum. The plaintiff vide the second notice dated 6th August, 2008, referred to the notice dated 8th July, 2008 and again called upon the defendant to vacate the premises in terms of notice dated 8th July, 2008. It is, thus, clear that the plaintiff conveyed his intention to the defendant that it was no more desired as tenant and therefore, the tenancy was validity terminated."

26. Suit of the respondent was thus decreed, under Order XII Rule 6 CPC.

27. Before delving with the contentions of the appellant, it would be appropriate to produce the

relevant provisions and the settled law with regard to relevant provisions.

28. Order XII Rule 6 CPC reads as under:

“6. Judgment on admissions:-

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

29. Supreme Court in ***Uttam Singh Dugal & Co. Ltd. v. Union Bank Of India and ors.***, AIR 2000 SC 2740 held:-

“As to the object of the Order XII Rule 6, we need not say anything more than what

the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed."

30. Appellant herein, in its written statement, in reply to para Nos. 2 to 4 of plaint on merits, has stated;

"2-3. That the contents of paragraph nos. 2-3 are wrong and denied. It is incorrect and denied that the Defendant made defaults in making the payments of the rent as alleged. It is worth to mention here that the Defendant is taking every possible care that the rent is received by

the plaintiff on time and the rent has been paid on time and with utmost diligence and urgency. It is also pertinent to mention here that it is not that the Defendant, who is causing harassment or trouble to the Plaintiff. Needless to mention herewith that the Defendant has deposited 3 months' rent amounting to Rs. 13,35,000/- (11,85,000/- under lease deed dated 26.12.2006 and Rs. 1,50,000/- under lease deed dated 07.06.2007) which itself is a substantial amount and further more originally, the Defendant has let out premises vide lease deed dated 26.12.2006 on monthly rental of Rs. 3,95,000/- and subsequent to that after experiencing of satisfactory conduct of the Defendant, the Plaintiff has entered into further lease deed dated 07.06.2007 for the balance area of the premises on monthly rental of Rs.50,000/-."

"4. That the contents of paragraph no.4 are false, misconceived, incorrect and vehemently denied. It is incorrect and denied that the Defendant has not paid rent for three months i.e. of May, June and July, 2008. It is submitted that the Defendant went to pay for the rent to the Plaintiff, but, the Plaintiff refused to accept the same for the reasons best known to him. It is worth to mention here that the Defendant was and is ready and willing to pay the said rent for three months, i.e. for May, June and July, 2008

and hence therefore such delay is not due to the Defendant and there is no violation of the Lease Deeds as alleged.....”

31. The above averments made in the written statement, clearly show that appellant, admits the Landlord and tenant relationship. Execution of registered lease deed dated 7th June, 2007 has not been challenged by the appellant, at any stage of proceedings. Appellant also does not deny that arrears of rent were and are still due.

32. As regards legal notice dated 8th July, 2008, appellant’s written statement is silent on this point. However, the certificate issued by postal authorities, clearly shows that appellant had received the legal notice, yet he failed to comply with it.

33. Various judgments cited by learned counsel for the appellant, are not applicable to the facts of the present case, as in the present case, relationship of

landlord and tenant between the parties, the rate of rent and arrears of rent due, are admitted.

34. Only question of dispute is as to whether legal notice had been served or not and whether there has been any violation of the terms of the lease agreement.

35. As far as service of legal notice is concerned, as already stated above, as per findings of the trial court, there is no specific denial about the service of legal notice dated 8th July, 2008 and as per certificate, issued by postal authorities, notice dated 6th August, 2008 also has been duly served.

36. As far as violation of terms of lease deed is concerned, there is violation of clause 19 of the lease deed, which read as under;

“That if the Lessee does not pay the lease charges for a period of three months, under this agreement, the Lessor will be entitled to terminate this Lease agreement forthwith and Lessor will also be entitled for all rights that he has on the termination of Lease Agreement.”

37. Since, appellant is in arrears of the rent w.e.f. May, 2008 till date, and there has been violation of the terms of the lease, under these circumstances, the respondent is entitled to the relief prayed.

38. Consequently, I do not find any infirmity or ambiguity in the impugned judgment. There is no merit in the present appeal and the same is hereby dismissed.

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39. Dismissed.

40. Copy of this order be sent to trial court.

41. Trial court record be sent back.

29th May, 2009
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V.B.GUPTA, J.