

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

% **Judgment reserved on: 13.08.2009**
Judgment delivered on: 06.10.2009

+ **C.R.P. NO.168/2007**

M/S PUSHPA AGGARWAL & CO. PVT. LTD. PETITIONER
Through: Mr. Sanjay Jain, Senior Advocate
with Ms. Manjula Gandhi, Ms. Ruchi
Jain and Mr. Keshav Ranjan,
Advocates

versus

M/S MOHAN EXPORTS (INDIA)
PVT. LTD. & ANR. RESPONDENTS
Through: Mr. G.L. Rawal, Senior Advocate
with Mr. Rajesh Rawal and Mr.
Pranay Tiwari, Advocates

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

J U D G M E N T

VIPIN SANGHI, J.

1. In challenge in this civil revision petition under Section 115 CPC is the order dated 28.07.2007 passed by Sh. Inder Jeet Singh, Additional District Judge, Delhi in the petitioner's/plaintiff's suit being CS/537/06/89 whereby the learned Additional District Judge had dismissed the petitioner's application under Order 12 Rule 6 CPC seeking a partial decree for possession on the basis of alleged

admissions made by the respondent/defendant in the written statement and documents.

2. The petitioner has filed the suit for ejectment in respect of property known as 7 Community Centre, Zamrudpur, Kailash Colony Extension, New Delhi and mesne profits and damages against the respondents.

3. The case of the petitioner is that the aforesaid property was initially acquired and built by M/s Pushpa Aggarwal & Co., which according to the petitioner was a partnership firm wherein Smt. Pushpa Aggarwal and Sh. Harish Aggarwal were partners. According to the petitioner the right, title and interest of the said Smt. Pushpa Aggarwal and Sh. Harish Aggarwal in M/s Pushpa Aggarwal & Co. were taken over by M/s Pushpa Aggarwal & Co. Pvt. Ltd. and thus, M/s Pushpa Aggarwal & Co. Pvt. Ltd. became the owner/landlord of the said premises. According to the petitioner the entire building i.e. 7, Community Centre, Zamrudpur, Kailash Colony Extension, New Delhi was leased out vide a lease deed dated 04.05.1979 to respondent No.1/defendant No.1 M/s Mohan Exports (India) Pvt. Ltd. on a monthly rent of Rs.23,000/-, which was subsequently increased to Rs.25,300/- per month. The petitioner further averred in its plaint that respondent No.2/defendant No.2 is the successor-in-interest of the respondent No.1/defendant No.1. According to the petitioner the lease was for a fixed period of 5 years w.e.f. 01.06.1979 with one extension of another 5 years with increase of rent by 10%. The petitioner averred that the

defendants had exercised the option to extend the lease and that is how the rent was increased from Rs.23,000/- per month to Rs.25,300/- per month. The petitioner avers that the respondents raised frivolous objections with regard to the date of initiation of the lease by claiming that the lease started w.e.f. 15.06.1979 and not from 01.06.1979. In the plaint the plaintiff referred to the legal notice dated 10.05.1989 sent by the plaintiff to the defendants as well as the reply thereto dated 01.06.1989 received from the defendants. The plaintiff further claimed that the lease stood determined by efflux of time on the night of 31.05.1989/01.06.1989 as per the terms of the lease deed dated 04.05.1979.

4. The respondents/defendants filed their written statement. The defendants denied the existence of the plaintiff as a private limited company incorporated under the Companies Act. The claim that Sh. Rakesh Aggarwal is one of the directors of the company was also denied. It was also denied that a resolution dated 11.11.1989 had been passed for filing the suit. It was denied that the suit had been properly signed, verified and instituted by a competent person. The authority of Sh. Rakesh Aggarwal to sign and verify the pleadings or institute the suit was also denied. It was not admitted that M/s Pushpa Aggarwal & Co. was a partnership firm or that Smt. Pushpa Aggarwal and Sh. Harish Aggarwal were its partners. The averment that the right, title and interest of Smt. Pushpa Aggarwal and of Sh. Harish Aggarwal in M/s Pushpa Aggarwal & Co. were taken over by M/s Pushpa Aggarwal & Co. Pvt. Ltd. were also denied. It was also denied that M/s

Pushpa Aggarwal & Co. Pvt. Ltd. became the owner of the suit property. In paragraph 4 of the written statement, it was stated by the defendants:

“In fact, the premises were let out to the defendants by M/s. Pushpa Aggarwal & Co. through its proprietors Smt. Pushpa Aggarwal and Harish Aggarwal. No doubt on the instructions of the said landlords subsequently the rent was being paid in the name of Pushpa Aggarwal & Co. Pvt. Ltd. but the said private company never became the landlord rather it was Agent for the purpose of collecting the rent on behalf of the landlord. It is stated that plaintiff has nothing to do with the property and have no relationship of landlord and tenant between the parties for the reasons that M/s Pushpa Aggarwal & Co. Pvt. Ltd. have been collecting rent as Agents of Shri Harish Aggarwal and his wife Smt. Pushpa Aggarwal. Suit on this account is also not maintainable.”

5. It was also pleaded by the defendants that the purpose of letting was composite i.e. for office and industrial activity. The defendants have averred that since the purpose of the tenancy is also industrial, the same could not be terminated without giving a 6 months' notice. The lease itself being unregistered could not be looked into. The defendants also pleaded that the property had been let out from 15.06.1979 and that the tenancy, in law, was on yearly basis. The respondents/defendants admitted that the monthly rent was enhanced from Rs.23,000/- to Rs.25,300/-. The defendants, however, admitted the receipt of the notice dated 10.05.1989.

6. On the basis of the pleadings of the parties, the trial Court framed the following issues on 10.02.1997:

- “1. Whether in view of the termination of lease of plot the present suit is maintainable?
2. Whether the suit is bad for mis-joinder of parties?
3. Whether the suit has been signed, verified and instituted by a competent person?
4. Whether M/s. Pushpa Aggarwal & Co. is the owner/landlord of the property?
5. Whether the plaintiff is entitled to terminate the tenancy and ask for possession without reimbursement of the amount so spent, as stated in the written statement?
6. Whether tenancy has been legally terminated?
7. Whether the lease deed can be looked into being deficiently stamped and being unregistered?
8. Whether the defendant is not liable to reimburse the amount spent for making the property habitable?
9. Whether the plaintiff is entitled to any amount, if any what?
10. Whether the defendant is not holding over as rent was being accepted after service of notice?
11. Relief.”

7. The plaintiff preferred an application bearing no. I.A. 12769/1994 under Order 12 Rule 6 CPC dated 20.12.1999. The plaintiff also preferred another application being I.A. No.5344/2001 under Section 65 of the Evidence Act for permission to place on record resolutions dated 11.11.1999 and 02.02.2001 and to lead secondary evidence in respect of the said record.

8. The application preferred by the petitioner under Order 12

Rule 6 CPC was dismissed by the trial Court initially on 10.08.2006. The said order was assailed by the petitioner before this Court in C.R. No.289/2006. The said revision petition was allowed by the Court vide order dated 11.05.2007. The substantive portion of the said order reads as follows:

“1. If for no other reason, impugned order dated 10.08.2006 has to be set aside and matter remanded for fresh adjudication for the reason after pronouncing the order, learned Judge in his own handwriting has penned a note which reads as under :-

‘N.B.- After announcement of order it is realised that case law presented by plttff. could not be reflected in order inadvertently.’

2. If the learned Judge realised that he has not referred to the case law cited, he ought to have rectified himself by recalling the order after notice to the parties and pen down a fresh order.

3. Petitioner who is the plaintiff had filed an application under Order 12 Rule 6 CPC. The same has been dismissed vide impugned order dated 10.8.2006.

4. In view of the note penned down in the handwritten note of the judge, I set aside the order dated 10.8.2006.”

9. The matter was remanded back for reconsideration of the petitioner’s application under Order 12 Rule 6 CPC. By the impugned order, as aforesaid, the said application of the petitioner has once again been dismissed.

10. Mr. Sanjay Jain, learned senior counsel for the petitioner submits that the rate or rent admittedly was beyond Rs.3500/- per

month. Therefore, the tenancy is governed by the Transfer of Property Act and not protected under The Delhi Rent Control Act. He submits that the tenure of the lease being 5 years, renewable by another 5 years and, the said period even after its renewal having come to an end by efflux of time, the lease stood determined. He submits that in any event the petitioner/plaintiff had served a notice dated 10.05.1989 upon respondents/defendants for determination of the lease. The receipt of the said notice by the defendants is admitted. He submits that the defendants have raised absolutely false and frivolous pleas to evade their ejection from the suit property which they continue to occupy even after a lapse of over 20 years from the date of the termination of the lease in the year 1989. He submits that the plea that the purpose of letting was industrial and that, therefore, the lease could be determined by a notice for six months only is totally frivolous. In support of this submission he relies on the decision of the Supreme Court in **Janki Devi Bhagat Trust, Agra v. Ram Swarup Jain (dead) by LRs** (1995) 5 SCC 314, which has also been followed by a Division Bench of this Court in **Theeta Industrial Heating Equipments (P) Ltd. vs. Harvinder Singh & Ors.** 65 (1997) DLT 30 (DB). He also places reliance on another decision of this Court in the case of **Abdul Hamid & Ors. v. Charanjit Lal Mehra & Ors.** 74 (1998) DLT 476. He submits that the plea raised by the respondents with regard to the lack of competence of Sh. Rakesh Aggarwal to institute the suit on behalf of the petitioner is an equally frivolous plea and such pleas cannot come in the way of passing of a decree under

Order 12 Rule 6 CPC, if the plaintiff is otherwise found to be entitled to such a relief on the basis of admitted facts. In support of his submission, the petitioner relies on ***Atma Ram Properties (P) Ltd. vs. Pal Properties (India) Pvt. Ltd. & Ors.*** 2002 (62) DRJ 623. He also relies on ***Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd. & Ors.*** 66 (1997) DLT 54 (DB) to submit that admission need not be made expressly in the pleadings. Even on constructive admissions Courts can proceed to pass a decree in favour of the plaintiff.

11. On the other hand, Mr. Rawal, learned senior counsel for the respondents submits that various triable issues have been raised by the defendants and accordingly, issues have been framed by the trial Court. He submits that the defendants/respondents have seriously challenged the competence of the petitioner to file the suit, inter alia, for ejectment. The defendants do not admit that the petitioner is the owner/landlord of the property. The property had been given on lease hold basis by the DDA in the name of M/s Pushpa Aggarwal & Co. According to the defendants, M/s Pushpa Aggarwal & Co. was a proprietary concern of Smt. Pushpa Aggarwal. Since the plaintiff claims that M/s Pushpa Aggarwal & Co. was a partnership firm wherein Smt. Pushpa Aggarwal and Sh. Harish Aggarwal were the partners and that, inter alia, the assets of that partnership firm were taken over by the petitioner, it is for the petitioner to establish the same by leading requisite evidence. Until that is done the petitioner cannot claim itself to be the owner/landlord of the suit premises. He refers to the reply

dated 01.06.1989 to the legal notice dated 10.05.1989. In the said reply itself the defendants had stated that they had started paying the rent of the property in question to M/s Pushpa Aggarwal & Co. Pvt. Ltd. only as a rent collector, while denying that M/s Pushpa Aggarwal & Co. was taken over by M/s Pushpa Aggarwal & Co. Pvt. Ltd. In paragraphs 4, 5 & 6 of the reply the defendants had stated as follows:

“4. With reference to para 4, we have instructions to state that in case M/s Pushpa Aggarwal & Co. Pvt. Ltd., has taken over the ownership of the property from M/s Pushpa Aggarwal & Co., our client would have no hesitation in admitting your client to be its landlord. Since your client, never furnished any proof to our client about the change of ownership of the property, our client is therefore, totally justified in claiming that your client is only entitled to collect rent as per the instructions of the actual landlord i.e. M/s Pushpa Aggarwal & Co.

5&6. With reference to paras 5 & 6, it is admitted that lease deed dated 4.5.1979 was signed between your client and our client but the same was not registered. It is, however, admitted that your client has been receiving rent of Rs.25,300/- w.e.f. June 1984.....”

12. He further submits that along with the application under Order 12 Rule 6 CPC, the plaintiff sought to produce documents which earlier did not form part of the suit record. The same could not have been done as the application itself was filed on or about 20th December, 1999 in this suit, wherein issues had already been framed on 10.02.1997. The documents filed along with the application have not yet been taken on record as no application had been filed to seek

leave of the Court to file the documents at the belated stage. He further submits that the plaintiff itself has filed an application under Section 65 of the Evidence Act to lead secondary evidence pertaining to the resolution dated 11.11.1989 and 02.02.2001 allegedly passed by the Board of Directors of the petitioner company on the basis of which the suit had been instituted by Mr. Rakesh Aggarwal. It is argued that this act of the petitioner/plaintiff itself shows that a triable issue with regard to the alleged decision taken by the petitioner company to file the suit, and the competence of the person instituting the suit on behalf of the petitioner, which go to the root of the matter are yet to be decided. Unless the said issues are decided, the petitioner cannot, under any circumstance, get any relief in the suit, much less on the foundation of Order 12 Rule 6 CPC.

13. Having heard learned counsels for the parties, I am of the view that there is no merit in this petition and the learned trial Court has rightly dismissed the petitioner's application under Order 12 Rule 6 CPC. The petitioner has founded the said application on various documents filed for the first time along with the application which was filed much after the framing of the issues on 10.02.1997. The petitioner did not seek leave of the Court to produce the said documents at a belated stage. No doubt, the defendants have admitted the receipt of the legal notice dated 10.05.1989 and have also referred to their reply dated 01.06.1989 in their written statement. However, that does not mean that the plaintiff can chose to file the documents at any stage it wills. In any event, the documents having

been filed belatedly, the same ought to have been accompanied with an application to seek leave of the Court to place the said documents on record and upon the Court finding justification for the same, the Court could permit the said documents to be taken on record.

14. Issue No.3 framed by the trial Court reads "*Whether the suit had been signed, verified and instituted by a competent person?*" To prove this issue, it is imperative for the plaintiff/petitioner to prove on record the Board Resolution on the basis of which Sh. Rakesh Aggarwal claims authority to file the suit. The plaintiff in paragraph 1 of the plaint refers to the resolution dated 11.11.1989 whereby it claims to have resolved that a suit for possession by ejectment of the defendants in respect of the suit property, and for recovery of mesne profits/damages be filed through Sh. Rakesh Aggarwal, one of the Directors of the plaintiff company. The plaintiff has admittedly filed an application under Section 65 of the Evidence Act to lead secondary evidence in respect of, inter alia, the resolution dated 11.11.1989. Therefore, the plaintiff/ petitioner cannot get any relief in the suit unless the petitioner is able to cross this initial hurdle of establishing that the suit was authorizedly filed and had been duly signed, verified and instituted by a competent person. It is also in serious dispute whether M/s Pushpa Aggarwal & Co. was a proprietary firm or a partnership firm. According to the defendant it was a proprietary firm of Smt. Pushpa Aggarwal, whereas the petitioner alleges that it was a partnership firm of Smt. Pushpa Aggarwal and Sh. Harish Aggarwal. It also needs to be established on record that the rights, title and

interests of M/s Pushpa Aggarwal & Co., which includes the rights in the suit property were taken over and stood vested in the petitioner company. The defendants/respondents have contended that the rent was being paid to the petitioner on the directions of the original landlord as a rent collector and not in recognition of the fact that the petitioner is the landlord. It is, therefore, a matter of trial whether the respondent paid the rent to the petitioner in their capacity as landlord/owner or only as a rent collector.

15. No doubt, there is merit in the submission of the petitioner that the lease could not be said to be yearly, and merely because it is claimed that the lease was, inter alia, for industrial purpose, the same required termination by 6 months' notice. The lease in question which is an unregistered lease and, therefore, a month to month lease could be terminated by a simple 15 days' notice. The decisions cited by the petitioner in **Janki Devi Bhagat Trust** (supra) and **Theeta** (supra) cover the petitioner's case as well. But as aforesaid, there are various other issues which need to be determined after holding a trial and unless those issues are determined the petitioner/plaintiff cannot claim any relief in the suit. The decisions cited by the petitioner in the case of **Surjit Sachdev** (supra) and **Abdul Hamid** (supra), in my view, do not advance the case of the petitioner. Each case has to be examined on its own facts to determine where there are sufficient admissions made by the defendant/tenant so as to entitle the plaintiff/landlord to a decree under Order 12 Rule 6 CPC. In this case, as aforesaid, various triable issues arise without the determination of which no relief can be

granted to the petitioner.

16. In ***Atma Ram Properties*** (supra) no doubt the Court brushed aside the issue with regard to the validity of the resolution which authorized the person on behalf of the plaintiff company to institute the suit. However, that was a case where the Court came to the conclusion that the ingredients for passing of a decree for possession stood established and it was in those circumstances that the Court held that there was hardly any evidence that the defendant could lead. The Court held that the denials were totally sham. The same cannot be said of the present case, particularly when a specific issue has been framed by the Court, being issue No. 3 and the petitioner has itself moved an application under Section 65 of the Evidence Act to lead secondary evidence in respect of the Board resolution stated to have been passed by the petitioner company.

17. For all the aforesaid reasons, I see no merit in this petition and dismiss the same, leaving the parties to bear their own costs.

18. Considering the fact that the suit has been pending since the year 1989, I direct the trial Court to expedite its disposal as expeditiously as possible and by according high priority to it.

19. Petition stands disposed off.

(VIPIN SANGHI)
JUDGE

OCTOBER 06, 2009
rsk/dp