

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 109/2009**

Date of decision : August 12, 2009

VINAY KUMAR Appellant
Through : Mr. Nalin Tripathi, Adv.

Versus

DR. SUSHIL KUMAR JAIN Respondent
Through : Mr. Sanjeev Sabharwal, Adv.
with Mr. Alok Singh, Adv.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not?
- (3) Whether the judgment should be reported in the Digest ?

J U D G M E N T

ARUNA SURESH, J. (Oral)

CM 11141/2009 (exemption)

Exemption allowed, subject to just exceptions.

Application stands disposed of.

RSA 109/2009 & CM 11140/2009

1. Notice of the appeal be issued to the respondent.

RSA 109/2009

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the digital data is as per the physical
file and no page is missing.

2. Mr. Sanjeev Sabharwal, Advocate accepts notice on behalf of the respondent.
3. Arguments heard on formulation of substantial question of law and admission of appeal.
4. Impugned in this appeal is the judgment and decree of the learned ADJ dated 16.7.2009 whereby the appeal of the appellant against the judgment and decree of the trial court whereby a decree for possession under Order 12 Rule 6 CPC was passed against the appellant, was dismissed.
5. Respondent being the owner and landlord of property bearing No.186, Pocket C, 2nd Floor, Sidharth Extension, New Delhi, admeasuring 75.86 sq. metres, rented out the said property to the appellant by way of an oral tenancy @6500/- per month in August 2003, tenancy being month to month tenancy. Since appellant was in arrears of rent after January 2006, the respondent terminated his tenancy, vide notice of termination dated 4.6.2007. This notice was duly replied by the appellant on 7.7.2007. Since appellant failed to vacate the premises, respondent filed a suit for

possession as well as for arrears of rent/damages against the appellant.

6. Appellant contested the said suit claiming himself to be the purchaser of the said property by way of an oral agreement to sell dated 30.1.2006 for a consideration amount of Rs.28 lacs, out of which, he claimed that he paid Rs.3 lacs as Bayana and therefore, he stopped making payment of rent to the respondent as agreed between them. The trial court taking into consideration admission of the appellant that he was inducted as a tenant in the suit premises by way of an oral tenancy @6500/- per month and also that he received notice of termination of tenancy and replied by him, was pleased to grant a decree for possession on an application on the respondent filed under Order 12 Rule 6 CPC. Appellant filed an appeal against the order of the civil judge dated 22.4.2009. The said appeal was also dismissed.
7. Assailing the judgment and decree of the appellate court dated 16.7.2009, this appeal has been filed.
8. Appellant had filed a suit for specific performance of

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the oral agreement to sell in this Court. However, the said suit was dismissed by the Court on 2.2.2009 with the observations that no plea of oral agreement and payment of cash without a receipt as a part consideration for transfer of immovable property could be accepted.

9. Appellant claims that he has filed an appeal against the judgment and decree of this Court whereby his suit for specific performance was dismissed. Be that as it may, that cannot be a basis for consideration of this appeal, as relationship of landlord and tenant between the parties is admitted.
10. The appellate court while dismissing the appeal noted three relevant facts. They are:

"1) The appellant had admitted the relationship of landlord and tenant along with the fact that he had received the notice of termination of tenancy and had paid rent up to January 2006 in its written statement.

2) That as the trial court was competent to pass a decree of possession without any trial, even without asking the plaintiff to lead evidence, simply on the basis of the pleading, document and other admission. There was no defence available with the appellant which

goes to the root of the matter and requires trial.

3) Considering that there was categorical, unequivocal and specific admission on the part of appellant and High Court vide order dated 2.2.2009 disbelieved the defence of the appellant.

11. Learned counsel for the appellant Mr. Nalin Tripathi argues that in the absence of any clear, unequivocal and unconditional admission on the part of the appellant, the lower courts erred in passing a decree on an application under Order 12 Rule 6 CPC and the order of the appellate court is unmindful as it is based upon non-application of mind.
12. He has referred to ***Kalavakruti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy - (1999) 7 SCC 114*** to emphasise that appellant is entitled to an opportunity to prove his defence, even on a contract based upon an oral agreement and even if it is assumed that appellant was not able to succeed in obtaining a decree of specific performance, he is entitled to prove the payment of advance to the respondent so as to get the refund or claim adjustment.
13. I do not find any force in these submissions in view

of the admitted facts of the parties.

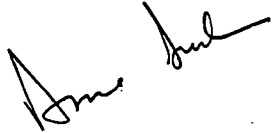
14. Learned counsel for the appellant submits that respondent has to prove his own case to obtain a decree even though the appellant is proceeded ex-parte or has no defence and therefore, according to him the suit for possession filed by the respondent was not maintainable in the absence of declaration of title.
15. The trial court as well as the appellate court were right in taking note of clear, unequivocal and unconditional admission on the part of the appellant. As already pointed out above, relationship of landlord and tenant between the parties is admitted. The rate of rent of Rs.6500/- as agreed between the parties from the date of tenancy i.e. August 2003 is also an admitted fact. It is also not disputed that after January, 2006, appellant had stopped making payment of rent. There is clear admission on the part the appellant that he received a notice of termination of his tenancy on 5.6.2007. This notice was duly replied by him on 7.7.2007. Under these circumstances,

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Kalavakruti Venkata Subbaiah v. Bala Gurappagari Guruvi Reddy (supra) is of no help.

16. The second limb of argument about appellant being ex-parte is irrelevant as application under Order 12 Rule 6 CPC was duly contested by the appellant.
17. The only defence which was raised by the appellant was that he entered into an oral agreement to sell on 30.1.2006 and paid a sum of Rs.3 lacs as Bayana in cash and agreed to pay remaining amount of Rs.25 lacs subsequently.
18. It is pertinent that suit of the appellant for specific performance of the oral agreement to sell was dismissed by this Court. In the said suit, his statement under Order 10 CPC was recorded wherein he made the above narrated admissions. The trial court took into consideration the said statement of the appellant as well. The courts below also took into consideration the judgment and order of this Court passed in the suit for specific performance, which was dismissed. Under these circumstances, I do not find any error committed by the trial court or the first appellate court, in law.

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19. As regards claim of the appellant for Rs.3 lacs paid as Bayana, the case of the respondent for recovery of arrears of rent and damages/mesne profits is still pending adjudication. For that purpose, therefore, the appellant is entitled to lead his evidence to prove that he paid Rs.3 lacs as Bayana money and can claim adjustment of the same.
20. Under these circumstances, the questions of law as formulated in para 4 of the appeal do not arise. In fact no substantial question of law is involved.
21. Hence, I find no merits in the appeal. The same is accordingly dismissed.


(ARUNA SURESH)
JUDGE

August 18, 2009
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