

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

+ **RFA NO. 296 OF 2009**

Date of Decision: 21st August, 2009

DELHI STATE CIVIL SUPPLY CORPORATION LTD. Appellant
! Through: Mr. Anil Kumar, Advocate

Versus

\$ SMT.CHARANJIT KAUR & ORS. Respondents
^ Through: Mr. Anuj Kr. Sinha, Advocate

* **CORAM:**
HON'BLE MR. JUSTICE P.K.BHASIN

1. Whether Reporters of local papers 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?

JUDGMENT

P.K.BHASIN, J: (ORAL)

This appeal is against the judgment of the learned Additional District Judge passed on 17th July, 2009 in Suit No. 630/2008 filed by the respondents 1-3 herein against the appellant-defendant and its Managing Director for possession and damages/mesne profits in respect of premises No. 8, 8A, Regal Building, Connaught Place, New

Delhi whereby while deciding a preliminary objection regarding the non-maintainability of the suit raised by the appellant-defendant because of arbitration agreement between the parties a decree for possession in respect of the aforesaid premises has also been passed against the appellant-defendant by invoking Order 12 Rule 6 of the Code of Civil Procedure, 1908.

2. The relevant facts are that the respondents no.1 to 3 herein had filed the suit for possession and damages/mesne profits in respect of the premises No. 8, 8-A, Regal Building, Connaught Place, New Delhi on the allegations that the same were given on license by them to the appellant-defendant with the permission of plaintiff No.4(respondent no.4 herein) who was the owner of the aforesaid premises, vide licence agreement dated 27th April, 1992 from 01/03/92 to 28/02/95 for running of a wine shop. The appellant-defendant was to pay licence fee @ 12.5% of the gross profit from the total sales of liquor every month. It was pleaded that after the expiry of the period of licence "the tenancy had expired by efflux of time and tenancy became monthly tenancy." That tenancy was terminated vide notice dated 28/06/08 and the defendant was required to vacate the premises in its occupation on or before 19th July,2008 but it had failed to vacate the premises. So, the suit for possession and damages @ Rs.3,333/- per day was filed.

3. The appellant-defendant had contested the suit and in its written statement one of the objections raised was that the suit premises were given to it on licence and not on rent and that there

was an arbitration clause in the agreement dated 27th April, 1992 between it and the respondents 1-3 and so the suit was not maintainable. Other pleas taken were that its licence was not terminated validly and also that its licence had been renewed with mutual consent of the parties.

4. Learned trial Judge decided to examine as a preliminary issue the objection of the appellant regarding the jurisdiction of the Court to entertain the suit for possession in view of the alleged arbitration clause in the licence agreement between the parties. The learned trial Judge heard the arguments and vide order dated 17th July, 2009 rejected the appellant's objection regarding the non-maintainability of the suit. However, while rejecting that objection the trial Judge also proceeded to pass a decree for possession against the appellant invoking Order 12 Rule 6 CPC by observing that the appellant-defendant had admitted the receipt of notice of termination of its license and further that even if the relationship between the parties was to be considered as that of landlord-tenant the tenancy of the appellant could be a monthly tenancy at the most which could be terminated by 15 days notice and since admittedly the appellant had been served with the notice dated 28/06/08 requiring it to vacate the premises in its occupation the suit of the plaintiffs was liable to be decreed insofar as the relief of possession is concerned. It was also observed that even though as per the agreement between the parties three months notice of termination of the licence was required to be given but that clause was not attracted since that clause could be invoked only during the subsistence of the

agreement which had already expired in 1995. Suit was accordingly decreed in part and for the relief of damages/mesne profits the suit was kept pending.

5. Feeling aggrieved, the appellant filed the present appeal.

6. The main grievance urged by learned counsel for the appellant is that neither any application had been moved by the respondents under Order 12 Rule 6 CPC nor at the time of hearing of arguments on the objection of the appellant regarding non-maintainability of the suit any arguments were advanced from either side on the question of passing of a decree under Order 12 Rule 6 CPC because of any admissions in the written statement by the appellant-defendant and further that the appellant-defendant had, in any case, not made any admission regarding termination of its license and in fact had categorically claimed that there was no valid termination of the license as per the agreement between the parties. Learned counsel for the respondents has fairly conceded that at the time of hearing of the arguments on the appellant's objection regarding non-maintainability of the suit in view of the arbitration agreement between the parties no submissions were made from either side for passing a decree under Order 12 Rule 6 CPC. So, the learned counsel for the respondents submitted that he has no objection if the impugned judgment to the extent it grants the decree for possession in respect of the suit premises is set aside but liberty may be given to the respondents to pray to the trial Court for a decree of possession under Order 12 Rule 6 CPC which prayer can be

considered after giving an opportunity to both the parties to make their respective submissions on this aspect of the matter.

7. In view of the aforesaid submissions of the learned counsel for the parties the impugned judgment of the trial Court is set aside to the extent a decree for possession has been passed against the appellant-defendant clarifying that if the respondents-plaintiffs make any request for passing of a decree under Order 12 Rule 6 CPC or if the trial Court itself also decides to once again invoke Order 12 Rule 6 CPC the matter shall be decided afresh in accordance with law after giving an opportunity to both the parties to advance their respective submissions. It is also clarified that this Court has not gone into the merits at all as far as the applicability or otherwise of Order 12 Rule 6 CPC to the facts of the present case is concerned and so the learned trial Court while considering this aspect shall take the decision uninfluenced by the aforesaid concession having been made in this Court on behalf of the respondents for setting aside the decree for possession passed under Order 12 Rule 6 CPC.

The appeal stands disposed of accordingly and the parties are left to bear their own costs.

August 21, 2009
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P.K. BHASIN,J