

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ RFA(OS) No.104/2009 & CM No.16474/2009

P.P..A. IMPEX PVT. LTD. Appellant through
Mr. J.C. Mahindroo with
Mr. Jasmeet Singh, Advs.

versus

MANGAL SAIN MITTAL Respondent through
Mr. S.K. Puri, Sr. Adv.
with Mr. P.K. Mittal, Adv.

% Date of Hearing: November 19, 2009

Date of Decision: November 30, 2009

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE SUNIL GAUR

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

VIKRAMAJIT SEN, J.

1. This Appeal assails the Order dated 18.9.2009 passed by the learned Single Judge passing a Decree for possession predicated on the Plaintiff's Application, IA No.3384/2008 filed under Order XII Rule 6 of the Code of Civil Procedure, 1908 ('CPC' for short). The learned Single Judge has concluded "that the written statement contains unambiguous admissions about the lawful tenancy of the

defendant having expired on 31-12-2004; there has been no extension of the lease arrangement, which ended by efflux of time, and the plaintiff sent notices asking the defendant to vacate the premises. The plaintiff is, in this court's view, clearly entitled to the decree of possession he seeks, through the present application. In view of these findings, the relief sought in the other application is rendered infructuous; the plaintiff would have to prove his entitlement to damages; and the amount he seeks as a decree, for the purpose".

2. The learned Single Judge has rejected the Application of the Plaintiff, being IA No.3385/2008 moved simultaneously with the above mentioned application, praying for mandatory injunction requiring the Defendant to deposit a sum of Rupees 1,79,76,000/-.

3. The Appellant's case is that it had entered the demised premises by virtue of Memorandum of Understanding dated 27.11.2001 for taking on lease immovable property, being S-6, Green Park Extension, New Delhi from M/s. Kanhaiya Lal Bishan Chand, Clause 1 of which mentions that the Lease will be for a period of nine

years renewable every three years with an escalation of fifteen per cent in the rent every three years. An interest free refundable security deposit equivalent to four months rental was to be paid by the Appellant; and a detailed Lease Deed was to be executed. It is indeed unfortunate that copies of the said Lease Deed have not been filed alongwith the Appeal, whereas a photocopy of an unregistered Lease Deed dated 8.1.2008 on inadequate stamp paper has been filed. On the first date of hearing, Mr. J.C. Mahindroo, learned counsel for the Appellant had categorically stated that the Lease Deed dated 6.6.2002 was not registered; we had recorded this statement. On summoning the Trial Court records, we find this statement to be incorrect as the original duly registered Lease Deed, properly engrossed on the Stamp Paper of Rs.1,41,000/- was on the trial Court record. Even if we are to ignore the explicit terms of the later document dated 6.6.2002, the document dated 8.1.2002 is inadmissible in evidence, being an unregistered Lease Deed on a Stamp Paper of Rupees fifty only.

4. Learned counsel for the Appellant has repeated several times that the Appellant had incurred an expense of Rupees 4.4 crores in renovating the demised premises for purposes of running a restaurant-cum-bar called Fahrenheit. The Appellant has itself stated that on 7.6.2002 its Lessor M/s. Kanhaiya Lal Bishan Chand had sold the property to Smt. Raj Rani Sethi. The Trial Court records contain the original Sale Deed by which this transaction was effected. The Appellant next pleads that Smt. Raj Rani Sethi had on 27.9.2002 entered into an Agreement to Sell on 27.9.2002 with Mangal Sain Mittal and Sons, HUF, viz. the Respondent before us. The Appellant's case is that Shri Mangal Sain Mittal started creating mischief with a view to placing impediments for the Appellant "for running the said restaurant with the result that the entire business of restaurant and bar came to a standstill since April, 2004". It is next pleaded that in July, 2006 the Appellant agreed to "purchase the said property for a consideration of Rupees 50 lac and paid Rupees 6 lac in advance to Smt. Raj Rani Sethi through Shri Mangal Sain Mittal for the said deal." A Receipt for this alleged transaction is not available. The

Appellant pleads that Pay-Orders for Rupees 20 lac each were prepared along with cheques for an additional amount of Rupees 10 lac in the name of S/Shri B.L. Mittal and M.S. Mittal, together with requisite stamp paper, which was subsequently returned and a refund obtained by the Appellant. It is next pleaded that the Respondent had alleged that a Sale Deed had been executed in its favour by Smt. Raj Rani Sethi on 18.1.2007. We fail to appreciate any reason for the use of the word “alleged” since a copy of the Sale Deed dated 29.12.2006, registered on 18/1/2007, has been filed before the Trial Court.

5. The Appellant’s case is that a false notice dated 18.4.2005 was issued by the Respondent to the Appellant, followed by the Notice dated 1.3.2007 which was duly replied to by learned counsel for the Appellant on 3.4.2007, refuting all the allegations. The Suit for Possession, arrears of rent, mandatory injunction and mesne profit has been filed on 15.5.2007.

6. The argument of Mr. Mahendroo, learned counsel for the Appellant, is that the learned Single Judge has erred in decreeing the Suit on the basis of ‘admissions’, ignoring

the Defendant's case that an Agreement to Sell had been entered into between the Appellant and the Respondent. According to him, this allegation could only be substantiated after a Trial had been conducted and concluded. Reliance has been placed on the decision in *Manisha Commercial Ltd. -vs- N.R. Dongre*, 85(2000) DLT 211 in which one of us [Vikramajit Sen, J.] had dismissed an Application under Order XII Rule 6 of the CPC observing that it was wholly inappropriate to permit any party to employ this provision where vexed and complicated questions or issues of law had arisen. The facts in that case, however, are totally distinct to the factual matrix before us rendering that decision to be of no avail to the Appellant. Reliance has also been placed on *Parivar Seva Sansthan -vs- Dr. (Mrs.) Veena Kalra*, (86) 2000 DLT 817, which, on perusal, militates against the Appellant's case. This is evident from a reading of the following paragraph which learned counsel for the Appellant has relied upon:-

9. Bare perusal of the above rule shows, that it confers very wide powers on the Court, to pronounce judgment on admission at any stage of the proceedings. The admission may have been

made either in pleadings, or otherwise. The admission may have been made orally or in writing. The Court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well-established principles. Admission must be clear and unequivocal; it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part; even a constructive admission firmly made can be made the basis. Any plea raised against the contents of the documents only for delaying trial being barred by the Sections 91 and 92 of Evidence Act or other statutory provisions, can be ignored. These principles are well-settled by catena of decisions. Reference on this regard be made to the decisions in Dudh Nath Pandey -vs- Suresh Chandra Bhattasali, AIR 1986 SC 1509; Atma Ram Properties Pvt. Ltd. -vs- Air India, 65(1997) DLT 533; Surjit Sachdev -vs- Kazakhstan Investment Services Pvt. Ltd., 1997 II AD(Delhi) 518 = 66 (1997) DLT 54(DB); Abdul Hamid -vs- Charnajit Lal, 74(1998) DLT 476; and Lakshmikant Shreekant -vs- M.N. Dastur and Co., 51(1998) DLT 564.

7. So far as the case relating to Order XII Rule 6 is concerned, the Supreme Court has recommended resort to

this provision to bring a quick end wherever a vexatious and false defence has been presented. The following paragraph from *Charanjit Lal Mehra -vs- Kamal Saroj Mahajan*, AIR 2005 SC 2765 is reproduced for facility of reference:-

....In fact, Order XII Rule 8, C.P.C. is enacted for the purpose of and in order to expedite the trials if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute; then, in such a case in order to expedite and dispose of the matter such admission can be acted upon, in the present case, looking at the terms of lease deed, there can be no two opinions that the tenancy was joint/composite and not individual one. Therefore, on these admitted facts the view taken by learned Single Judge of the High Court appears to be justified. In this connection, a reference may be made to a decision of this Court in the case of *Uttam Singh Duggal & Co. Ltd. v. United Bank of India and Ors.* AIR 2000 SC2740. The Lordships have held as follows:

"In the Objects and Reasons set out while amending Rule 6 of Order 12 CPC 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."

The Supreme Court should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment"

8. In *T. Arivandandam -vs- T.V. Satyapal*, (1977) 4 SCC 467, V.R. Krishna Iyer, J. has observed *albeit* in the context of dismissing a vexatious plaint which is equally applicable when the Court is confronted with a defence which is implausible that if on a meaningful –not formal- reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the court should exercise its power under the said provision. And if clever drafting has created an illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party searchingly under Order X CPC.

9. It appears to us that the approach to be taken under Order XII Rule 6 is akin to what has been enunciated by the Supreme Court in *Mechalac Engineers & Manufacturers -vs- Basic Equipment Corporation*, (1976) 4 SCC 687 in the context of Order XXXVII of the CPC with

regard to granting Leave to Defend a summary suit. This is that if a defence amounting to moonshine has been presented, it should be summarily dismissed by not granting Leave to Defend and by decreeing the suit forthwith. The Courts are already groaning under the weight of bludgeoning and exponentially increasing litigation. The weight will unvaryingly increase if moonshine defences are needlessly permitted to go to Trial.

10. Reliance has been placed by learned counsel for the Appellant on *Her Highness Maharani Shantidevi P. Gaikwad -vs- Savjibhai Haribhai Patel*, (2001) 5 SCC 101, paragraph 26 of which is reproduced below for facility of reference:-

26. The agreement and power contemplate two stages for the parties to take steps required of them. Certain steps are required to be taken by the plaintiff prior to the grant of declaration under Section 21 and before he is put into possession and certain steps after such grant and on being put into possession. The plaintiff is required to prepare a scheme in conformity with Section 21 at his cost and to file on behalf of the owner a declaration in regard to the said property before the competent

authority within the prescribed period. The original defendant No.1 is required to sign relevant papers, applications, plans, drawings etc. as and when required by the plaintiff for the purpose of declaration and inquiries contemplated by Section 21(1) of the ULC Act. On making of declaration, as per clause (4), original defendant No.1 is required to deliver possession of the land to the plaintiff for execution of the scheme and construction in terms thereof. The plaintiff is authorised to recover the price of the land as may be determined by the competent authority and/or the State Government from their prospective members in the scheme; and is also entitled to receive deposits from the members and obtain loans from banks and other financial institutions and/or individuals for financing the scheme. Likewise, in the power of attorney also, the plaintiff has been authorised to take certain steps on behalf of the owner before the grant of declaration under Section 21 and being put into possession and certain steps after being put into possession. It is correct, as contended by Mr. Dhanuka, that these documents form part of same transaction. These documents have to be read together with a view to find out the manifest intention of the parties. It may, however, be noticed that affidavit-cum-declaration dated 10th February, 1988 was executed only by original

defendant No. 1 for the purpose of filing it before the competent authority and it reiterates the agreement and the power. By execution of this document in was neither intended to confer any additional rights in favour of the plaintiff nor to place any restriction on original defendant no.1 which was not envisaged by the agreement.

These facts are totally different to the one before us. The only other document available for consideration are the MoU dated 27.11.2001 and the Lease Deed dated 8.1.2002. Even if these are taken into consideration, they do not, in any manner, dilute or render ineffectual any of the terms of the duly registered Lease Deed dated 6.6.2002. The said precedent is, therefore, of no assistance to the Appellant. The Court should not lose sight of Sections 91 and 92 of the Indian Evidence Act, 1872.

11. We are of the view that the learned Single Judge has correctly approached the matter and arrived at conclusion in accordance with law. When a Suit for Possession is presented, the Court must look into the status of the Defendant. The Defendant may be in possession by virtue of part performance of an agreement. In such a case, he may be immune from eviction by virtue of Section 53A of

the Transfer of Property Act, 1882 ('TP' Act for short) as has been opined by our learned Brother, Madan B. Lokur, J. in *D.R. Puri -vs- Kamlesh Sawhney*, 2001(60) DRJ 738, a decision which has been relied upon by learned counsel for the Appellant, but without contextual justification. In this regard, no document whatsoever has been filed evidencing an Agreement to Sell the demised premises between the Appellant and the Respondent or even the predecessor-in-title, namely, Smt. Raj Rani Sethi. If the Trial Court had been confronted with a Receipt for the alleged sum of Rupees six lacs, it may have thought it appropriate to send the matter for Trial. If pleadings of this nature, which we see as total moonshine, are taken note of, the provision of Order XII Rule 6 would be virtually annihilated.

12. Where a party has come into possession as a tenant, by virtue of a duly registered Lease Deed, its terms would govern the relations between the parties. The following clauses of the Lease Deed are of significance:

1. That the present lease shall be for three years w.e.f. 01.01.2002 to 31.12.2004. After the expiry of the initial lease period, at the request of the Lessee, the Lease shall be renewed for two further

periods of three years each on same terms and conditions as laid down in this lease deed provided that the monthly rent shall be enhanced by 15% of the last rent paid on such renewals. However, on every renewal, a fresh lease deed shall be executed between the Lessor and the Lessee on the same terms and conditions.

2. That if the Lessee defaults in payment of rent as agreed above for a consecutive period of two months due to any reason, the Lessor shall have the right to terminate the lease and shall be entitled to re-enter the Demised Premises. It is further added that on account of non-payment the rent as mentioned above, the Lessee will not only cease to have any rights on the Demised Premises but will become a trespasser, and the Lessor shall be entitled to proceed against the Lessee and evict them from the premises as a trespasser.

13. It is the case of the Appellant before us that the initial period of lease had expired by efflux of time. No cogent evidence is forthcoming that the Appellant had sought a renewal of the Lease Deed and had simultaneously agreed to pay an increase of 15 per cent of the rental. Instead, its claim is that due to the harassment meted out to the Appellant by the Respondent, the entire business of the former had come to an end. The parties had subsequently

agreed that a renewal would be evidenced by a fresh Lease Deed for each successive periods. Not only has this event not occurred, but on the contrary it is not even the case of the Appellant that it had asked for a renewal in terms of the then prevailing Lease Deed. Significantly, for whatever reasons that may have motivated the Appellant to do so, the rent is also in arrears. The issuance of a notice to quit, terminating month-to-month tenancy, also stands admitted. The only defence put forward is that the Plaintiff had agreed to sell the property to the Appellant, which we have already concluded is total moonshine.

14. It has also been contended that the Defendant had not accepted the Plaintiff as the Lessor. In this connection, Section 109 of the TP Act immediately comes into play. It deals with a situation where the lessor transfers the leased property, in which event the transferee comes to enjoy all the rights and is burdened by all the liabilities of the Lease Agreement previously executed between the erstwhile lessor/owner with the lessee. Since the Appellant is in arrears of rent, the proviso to Section 109 clarifies that had the Appellant paid rent before the transfer to the previous

owner/lessor, that is, Smt. Raj Rani Sethi or even M/s. Kanhaiya Lal Bishan Chand, the present owner, that is the Respondent, could not make a claim for it. Section 111 of the TP Act is also relevant, since in the present case the lease is determined by efflux of time in accordance with sub-section (a) thereof. Section 111(g) of the TP Act contemplates forfeiture of the lease where the lessee breaks any express condition, such as responsibility for payment of rent. Section 111(h) of the TP Act speaks of the determination of a lease on the expiration of a notice to quit. The learned Single Judge had rightly found admissions on these vital issues and was, therefore, correct in decreeing the suit. This is quite clearly a case where keeping in perspective admissions made in the Written Statement on these vital facts, the suit could rightly have been decreed without subjecting the Plaintiff to the needless travails and excruciating delays of a Trial.

15. The Appeal is devoid of merit. The conclusions of the learned Single Judge, quoted by us above, stand fully substantiated. In those circumstances, it was the bounden duty of the learned Single Judge to pass a decree at that

very stage. The Appeal as well as the pending Application is dismissed. The parties, however, shall bear their respective costs.

16. Trial Court records be sent back to the Record Room.

(VIKRAMAJIT SEN)
JUDGE

November 30, 2009
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(SUNIL GAUR)
JUDGE