

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

% *Judgment reserved on : 02.11.2010*  
*Judgment delivered on:10.11.2010*

+ **RSA No. 137/2004 & C.M.7432/2004**

**PRAVEEN KUMAR WADHWA** .....Appellant

Through: Mr. Raman Kapoor, Advocate.

Versus

**M/S. ENDURE CAPITAL (P) LTD.** .....Respondent

Through: Mr. B.S. Mann with Ms. Smita Mann  
and Mr.H. Singh, Advocates.

**CORAM:**  
**HON'BLE MS. JUSTICE INDERMEET KAUR**

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

**INDERMEET KAUR, J.**

1. Arguments have been heard on admission. Counsel for the appellant has submitted that the findings in the impugned judgment decreeing the suit of the plaintiff/respondent under Order 12 Rule 6 of the Code of Civil Procedure (hereinafter referred to as the 'Code') is a perversity in as much as the impugned judgment has failed to appreciate that the question about the ownership of the suit property i.e. property bearing no. A-190, Inder Puri, New Delhi-12 was yet to be adjudicated upon.

2. It is pointed out that an execution petition had been preferred by the decree holder, Mr. S.C. Mehta, wherein he had sought attachment of the suit property; the judgment debtor was Mr. P.K. Wadhwa (the present appellant) and the Objector before the Executing Court was the respondent i.e. M/s. Endure Capital

Private Limited. Pursuant to the orders of the High Court an issue in this regard had been framed by the Executing Court. This is evident from the order dated 19.02.2003. It is pointed out that in terms thereof evidence is being led and the matter is yet pending; the question about the ownership of the respondent/Objector therein i.e. M/s. Endure Capital Private Ltd. is yet to be decided. In this view of the matter, a triable issue had arisen and a decree under Order 12 Rule 6 of the Code could not have been passed. For this proposition, reliance has been placed upon various judgments of High Court reported in 82 (1999) Delhi Law Times 281 titled as Sh. Mohan Prasad Jha Vs. Sh. Shambu Prasad Singh, 1999 (49) DRJ titled as R.S. Bakshi & Anr. Vs. H.K. Malhari & Anr. as also another judgment of this court reported in AIR 1992 Delhi 331 titled as Smt. Radha Lal Vs. M/s. Jessop & Company. It is pointed out that facts which require investigation and proof cannot be the subject matter of a decree under Order 12 Rule 6 of the Code; this provision cannot be resorted to cut short the litigation.

3. Arguments have been countered by the learned counsel for the respondent. It is pointed out that no doubt an execution petition had been filed by the decree holder i.e. Sh. S.C. Mehta against the judgment debtor P.K. Wadhwa (appellant) seeking attachment of the suit property (bearing no. A-190, Inder Puri, New Delhi-12) as certain amounts were payable to the decree holder. Respondent/Objector M/s. Endure Capital Private Ltd., had filed objections claiming that the suit property cannot be attached as he is the owner thereof. It was pursuant thereto that an issue had been framed about the ownership of the suit property. It is pointed out that those proceedings cannot come in the way of the clear and

unequivocal admission made by the appellant (defendant before the Trial Court) wherein he had admitted that a lease had been executed between the parties; the legal notice terminating his tenancy had also not been disputed. The tenancy having thus expired by operation of law, the defendant was rightfully ordered to be ejected.

4. Arguments have been heard.

5. The plaintiff i.e. M/s. Endure Capital Private Limited had filed a suit for recovery of possession, arrears of rent damages/mesne profits against P.K. Wadhwa, the defendant. The contention of the plaintiff was that he was the owner of the second floor of the property bearing no. A-190, Inder Puri, New Delhi-12. The plaintiff had purchased it vide a registered sale deed dated 07.09.1995. Lease deed of the same date i.e. 07.09.1995 had been executed between the parties i.e. the plaintiff and the defendant. Lease deed was for a period of seven months. On the expiry of the said period, it could be renewed for another period of 10 months w.e.f. 07.04.1996. It was a registered lease deed. Rate of rent was Rs. 6000/-. The last paid rent was up to January, 1997. The lease had expired by the efflux of time on 06.02.1997. The defendant failed to vacate the suit property. The tenancy of the defendant was also terminated vide legal notice dated 06.01.1999 duly served upon him. Defendant did not vacate the property; suit was accordingly filed.

6. Defendant in para 3 of the written statement had admitted that a registered sale deed of the said property was executed in favour of Mr. Dalip Bhatia, who is the Director of the plaintiff company. The execution of the lease deed between the parties also

stood admitted. It was also admitted that the said lease expired by efflux of time in February 1997. Relationship of lessor and lessee stood established. The notice dated 6.1.1999 under Section 106 of the Transfer of Property Act (hereinafter referred to as 'TPA') terminating the tenancy of the defendant w.e.f. the midnight of 06.02.1999 was also admitted. In the written statement an objection had been taken that Dalip Bhatia does not have the *locus standi* to file the suit. However, it was not disputed that Dalip Bhatia was the director of the plaintiff company. Another objection in the written statement was that in 1994-95, the defendant had entered into an agreement with the erstwhile owner of the property i.e. Sh. Avtar Singh; however, it was not disputed that Avtar Singh had thereafter on 7.9.1995 executed the registered sale deed in favour of the plaintiff company.

7. These admissions were noted by the Trial Judge and endorsed by the First Appellate Court. Decree for possession and mesne profits had thereafter followed in favour of the plaintiff. The impugned judgment had also taken note of the deed of understanding purported to have been executed in favour of the defendant on 05.10.1995 by the erstwhile owner, Avtar Singh, which was admittedly, a transaction after the execution of the registered sale deed dated 07.09.1995 vide which the title and ownership of the suit property stood transferred in favour of the plaintiff. The lease deed executed between the parties had described the plaintiff as the landlord; the defendant was described as the tenant; this document was admitted. There were two lease deeds; the first lease deed was dated 07.09.1995 and the

subsequent lease deed renewing the lease for another period of 10 months was dated 07.05.1996. Both were registered documents.

8. These findings of the Trial Judge endorsed by the First Appellate Court clearly call for no interference. Both the courts had rightly decreed the suit of the plaintiff under Order 12 Rule 6 of the Code. The admissions of the defendant/appellant in the written statement were clear and unambiguous. The appellant/defendant had clearly and categorically admitted in the written statement that the plaintiff is the owner of the suit property by virtue of the registered sale deed dated 07.09.1995. The subsequent lease deeds executed between the parties dated 07.09.1995 and the second which was the renewal of the initial lease dated 07.04.1996 were also admitted; they were registered documents. Legal notice terminating the tenancy of the defendant w.e.f. midnight of 06.02.1999 was also not a disputed document. It was not the contention of the appellant/defendant that this notice was lacking in legal particulars. Receipt of this notice was not disputed. Rate of rent was Rs. 6000/-. The suit property was not covered by the provisions of the Delhi Rent Control Act. These concurrent findings of the two courts below call for no interference.

9. The submission of the learned counsel for the appellant that the execution proceedings pending before the executing court bar the applicability of the provisions of Order 12 Rule 6 of the CPC is clearly a misunderstood proposition. The execution petition was filed by Sh. S.C. Mehta against the present appellant wherein the Objector/respondent had filed his objections to ward off the warrants of attachment which had ordered against the suit property. The decision of these objections in the execution petition

would not in any manner affect the relationship of landlord and tenant between the warring parties before this court. Section 116 of the Indian Evidence Act creates an estoppel; the tenant/appellant is estopped from challenging this relationship.

10. Judgments relied upon by the learned counsel for the appellant are inapplicable; they are distinct on facts; in this case the admissions of the appellant/defendant are unambiguous and clear. There is no merit in the appeal. Appeal as also the pending application is dismissed in limine.

**INDERMEET KAUR, J.**

NOVEMBER 10, 2010  
SS/rb