

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

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*Date of Judgment : 06.08.2010*

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**RSA.No.151/2010**

**MUKESH CHANDER KUMAR**

.....Appellant

Through:

Mr.Manu Sishodia, Mr.Paresh  
Sishodia, & Mr.Awadesh Bhakta,  
Advocates.

Versus

**SMT.SUMAN BENIWAL & ANR.**

.....Respondents

Through:

Mr.Sanjay Jain, Sr.Advocate,  
With Mr.R.C.Gupta, Mr.Naresh  
Kumar Beniwal & Ms.Ruchi  
Jain, 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.**(Oral)

**CM.14019/2010**

Allowed, subject to just exceptions.

**RSA.151/2010 & CM.14018/2010**

1. The plaintiff Suman Beniwal had filed a suit for possession of shop No.4 in property Khasra No.460/1, situated by the side of State Bank of Patiala, Rama Market, Pitam Pura, Delhi. This property had been leased out to the defendant Mukesh Chander at a monthly rental of Rs.3,777/-. Since 15<sup>th</sup> August, 2008, the defendant had not paid rent to the plaintiffs. Legal Notice dated 12.2.2009 had been sent to the defendant, pursuant to which he had remitted a sum of Rs.22,662/- to the plaintiffs, but not the

entire arrears. Thereafter, another legal notice dated 21.2.2009 had been sent to the defendant terminating his tenancy with the expiry of the midnight of 31<sup>st</sup> March, 2009.

2. Written statement had been filed.

3. Counsel for the plaintiff had, thereafter, moved an application under Order XII Rule 6 of the Code of Civil Procedure (hereinafter referred to as 'the Code') seeking a decree in view of the admissions made by the defendant in his written statement. The Trial Judge vide judgment dated 25.2.2010 decreed the suit of the plaintiff for possession. It was held that there were clear and unequivocal admissions made by the defendant in his written statement entitling the plaintiffs to a decree of possession. The relevant extract of the said finding, inter alia, reads as follows:

“.....it is clear from the record that the relationship of landlord and tenant is there between the parties, rate of rent per month is more than Rs.3,500/- and even the certified copy of the sale deed has been filed on record and there is admission of the legal notice dated 22.02.09 terminating the tenancy.....”

4. This finding of the Trial Judge was endorsed by the first appellate court in the impugned judgment dated 18.5.2010. The argument of the learned counsel for the defendant that disputed questions of fact had arisen going to the root of the case and as such the decree passed by the Trial Judge under Order XII Rule 6 of the CPC is liable to be set aside, was rejected. The appellate court in the impugned judgment had noted the fact that the plea of waiver of notice sought to be set up before the first appellate court had never been raised in the written statement, nor did it find mention in the reply to the application under Order XII Rule 6 of the CPC. In view of unequivocal and clear admissions made by the defendant, it was held that the judgment of the trial court

decreeing the suit of the plaintiffs for possession under Order XII Rule 6 of the Code did not call for any interference.

5. Before this Court, it has been urged by the learned counsel for the appellant that the preliminary objections in the written statement had clearly stated that since the rent already stood paid by the defendant, the notice dated 12.2.2009 stood waived. This written statement further stated that thereafter a second notice dated 21.2.2009 had been received, to which an appropriate reply had been given on 9<sup>th</sup> March, 2009. The written statement further states that rent had been paid upto 28<sup>th</sup> February, 2009 through a money order. It is vehemently contended by the learned counsel for the appellant that after the acceptance of this rent by the landlord, the legal notice stood waived and this is a disputed question of fact which requires a trial, and in this view of the matter, the courts below decreeing the suit of the plaintiff on an application under Order XII Rule 6 CPC was an illegality.

6. Learned counsel for the appellant has supported his submission by relying upon two judgments reported in 154 (2008) DLT 111(DB), **Puran Chand Packaging Industrial P. Ltd. Vs. Sona Devi & Another**, as also the second judgment reported in 86 (2000) DLT 817 (DB), **Parivar Seva Sansthan Vs. Dr.(Mrs.) Veena Kalra & Others**.

7. The arguments have been countered by the learned counsel for the respondent, who had appeared pursuant to a caveat. The learned counsel for the respondent has submitted that the orders of the two courts below call for no interference as all the necessary ingredients for a decree to follow on an application under Order XII Rule 6 of the CPC had been met.

8. The record shows that the relationship of the landlord and tenant between the parties is admitted. The rate of rent is also more than Rs.3,500/- per month. The last rent is 3,777/- per month. The legal notice dated 21.2.2009 has also been admitted and reply dated 9.3.2009 to the said notice had been sent by the defendant. On 9<sup>th</sup> March, 2009, no dispute was raised by the defendant that the acceptance of rent by the plaintiff/landlord amounted to a waiver of the notice. A perusal of this legal notice shows that the tenancy of the tenant had been terminated with effect from the midnight of 31<sup>st</sup> March, 2009; i.e. the last day of the tenancy month; advance notice period of 15 days was contained; the twin requirements essential for a notice under Section 106 of the Transfer of Property Act, (hereinafter called the 'TP Act') stood met.

9. The impugned judgments of the two courts below call for no interference in view of unequivocal and clear admissions made by the defendant in para 4 of the written statement, which had culminated into this decree.

10. The judgments relied upon by the learned counsel for the appellant are distinguishable. In the first judgment of Puran Singh (supra), the tenant had raised a dispute that after the service of the legal notice the plaintiff/landlord had increased the rent by 30% which had been accepted and as such acceptance of the enhanced rent amounted to a waiver of the notice. Further the plaintiff/landlord had not provided the agreed load of electricity on account of which the premises could not be gainfully utilized. There were questions of fact which could be decided by the court only after the parties were permitted to lead evidence.

Facts of the instant case are distinct. In this case, legal notice terminating the tenancy of the defendant had been given on 21<sup>st</sup> February, 2009 terminating the tenancy of the tenant with effect from the midnight of 31<sup>st</sup> March, 2009. Even as per the admitted case of the tenant, he had paid rent prior thereto, i.e., upto 28<sup>th</sup> February, 2009. There was no dispute on the rate of rent; further it is also not the case of the appellant that the landlord had accepted the rent after the date of the termination of the tenancy.

11. The second judgment relied upon by the learned counsel for the appellant in Parivar Seva Sansthan (supra), is also distinct. In this case, the dispute raised by the defendants was that they had become contractual tenants after 1995 and thereafter plaintiffs started accepting rent in their two individual names; these were held to be questions of fact, which required evidence and could not amount to an unequivocal or a positive admission. The facts of this case are again distinct and as such the ratio deduced therefrom cannot be applied.

12. In 80 (1999) DLT 706 (DB), **Uptron Powertronics Limited Vs. G.L.Rawal**, the Division Bench of this Court had the occasion to deal with the provisions of Order XII Rule 6 of the Code, where a suit for possession had been decreed. Para 7 of the judgment is relevant, which reads as under:

“In spite of the termination of the tenancy, the appellant continued in possession and occupation of the suit premises and the respondent continued to accept the rent tendered by the appellant. Therefore, to avoid any plea of waiver, the respondent once again terminated the tenancy of the appellant by a notice dated 5<sup>th</sup> November, 1997 or in the alternative last hours of 1<sup>st</sup> December, 1997.”

In the concluding paragraph of the judgment, i.e., in paragraph 27, the court has held that this notice dated 5<sup>th</sup>

November, 1997 was a valid notice under Section 106 of the TP Act. The decree passed by the courts below under Order XII Rule 6 CPC had been upheld.

13. The ratio of this judgment clearly shows that even where the landlord had accepted the rent tendered by the tenant, but thereafter in order to avoid the plea of waiver, he had sent a second notice dated 05.11.1997 to terminate the tenancy of the tenant on the last date of the tenancy month it was held to be a valid notice; this was to avoid the plea of waiver of the earlier notice.

14. In the instant case as well, the second notice dated 21.2.2009 had been sent by the landlord. Admittedly after the termination of the tenancy with effect from 31<sup>st</sup> March, 2009, no rent had either been tendered by the tenant and nor accepted by the plaintiff; the acceptance of rent for the period prior to the second notice could not amount to a waiver of this second notice.

15. The substantial questions of law have been formulated in the memo of appeal at pages 26-27. Perusal of the same as also in view of the arguments urged before this Court, no substantial question of law has arisen.

16. The appeal is dismissed in limine.

**INDERMEET KAUR, J.**

**August 06, 2010**  
**RS/**