

REPORTED

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

% DATE OF RESERVE: December 10, 2009

DATE OF DECISION: February 9, 2010

+ RFA 274/2009 and CM No.10578/2009

NATIONAL TEXTILE CORPORATION LTD

& ANR.

..... Appellants

Through: Mr. Sandeep Sethi Sr. Advocate with

Mr.Navin Sharma, Mr. Sindhu Sinha and

Mr.Nikhil Bhalla, Advocates

versus

ASHVAL VADERAA

..... Respondent

Through: Mr. Arun Mohan Sr. Advocate with

Mr.N.K. Kantawala, Advocate

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

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

: **REVA KHETRAPAL, J.**

1. This appeal is directed against the judgment of the learned Additional District Judge dated 9.4.2009 decreeing the suit of the plaintiff for possession under the provisions of Order XII Rule 16 of the Code of Civil Procedure.

2. The facts relevant for the decision of the present appeal are as follows:-

The respondent is the owner of property No.E-25, NDSE Part-II, New Delhi

measuring a covered area of 68.79 sq.mtrs.(740.44 sq.ft.) on the ground floor with public verandah in front as part thereof. The premises were let out to the appellant by the respondent in May, 1975 for 11 months by an unregistried lease deed, which expired on 03.04.1976. No renewal was sought and the appellant continued as a tenant holding over from month to month. On 16.8.1978 again an unregistered agreement was executed between the parties for a period of three years with the lease coming into effect from 03.03.1977. The three years term having expired by efflux of time on 03.03.1980, the appellant continued as a month to month tenant by holding over. The terms of the oral tenancy also kept on changing and on 01.01.2005, a new oral month to month tenancy came into existence whereunder the rent of the suit property was increased to Rs.15,000/- per month.

3. On 30.08.2006, the respondent served upon the appellant a notice to quit to which the appellant replied on 30.10.2006. On 04.12.2006, a civil suit No.286/2006 was filed by the respondent before the trial court for ejectment and recovery of mesne profits. The appellant filed an application under Section 8 of the Arbitration Act for referring the matter to a sole Arbitrator on the basis of an arbitration clause contained in the lease agreement dated 16.08.1978. This application was dismissed by the trial court holding that the terms of tenancy stood changed between the parties by an oral agreement and

the defendant, therefore, could not rely upon the agreement dated 16.08.1978 to claim existence of an arbitration clause.

4. Aggrieved by the order of the trial court dated 31.05.2007 dismissing the application under Section 8 of the Arbitration Act, the appellant filed a revision petition being Civil Revision Petition No.166/2007 in this Court. Significantly in the said revision petition, the submission of the appellant was that the agreement dated 16.08.1978 was a business agreement executed between the parties, and the respondent in terms of this agreement was entitled to a guaranteed sale commission and it was agreed that the petitioner shall pay a consolidated sum of Rs.15,000/- per month towards sale commission and rental. It was urged that since this agreement of 1978 contained an arbitration clause, the Court was bound to refer the matter to the Arbitrator for adjudication.

5. Rejecting the aforesaid contention of the counsel for the appellant, a learned Single Judge of this Court in his judgment and order held as follows:-

“4. A perusal of the agreement dated 16th August, 1978 filed by the petitioner would show that the relationship between petitioner and the respondent was that of a lesser and lessee and lease was granted to the petitioner in 1978 for a period of 3 years starting from 3rd March, 1977. An option was given in the agreement to renew the terms and conditions of the lease upon mutually agreed terms. There was a clause for terminating the agreement in case of failure on the part of either of the parties in fulfilling the terms. After

this agreement, which expired in 1980, no new agreement was executed.

5. It is settled law that in case of lease of immovable properties, if the lease is a period of one year or more lease deed is required to be compulsorily registered. The agreement relied upon by the petitioner is an unregistered (sic. document). Even otherwise, this agreement exhausted itself in 1980 and after 1980 there was no written agreement between the parties. After 1980 premises remained in occupation of petitioner (sic. petitioner) on the basis of a lease which was orally created from time to time and renewed from time to time as a month-to-month tenancy. The Court cannot look into or rely upon an unregistered document which purports to create lease of one year or more than one year. If a document is inadmissible because of its non-registration or because of its not having proper stamp duty, all its terms are inadmissible including the one which provides for an arbitration between the parties. An arbitration agreement can be enforced only along with the contract between the parties and such a contract must be a valid contract, admissible under law. If a contract is not admissible in law, every clause of it is inadmissible in law including arbitration clause.

6. Even if this lease agreement had been a registered lease agreement, on expiry of the lease period fixed in the original lease deed, the lease would have come to an end. Since no written lease deed was executed between the parties a new contract of tenancy had come into existence between the parties created orally. The parties cannot resort to the terms and conditions of the exhausted contract when a new contract had come into existence. If parties wanted that there should have been an arbitration clause between them in respect of further tenancy period, nobody stopped the parties from entering into such an agreement in writing, which is the basic requirement of any

*arbitration clause. Therefore, the reasoning of the petitioner that there was an arbitration clause in 1978 agreement was rightly rejected. When the written lease deed came to an end and a new oral lease was entered between the parties, the arbitration clause finding place in earlier lease deed cannot be invoked by a tenant. In **Vardhaman Spinning & General Mills Vs. Veena Kumari Wadhawan 68 (1997) DLT 761** a similar contention was put forward by the appellant before this court and this Court observed as under:-*

*“One of the arguments advanced by Mr. Bawa Shiv Charan Singh, learned Counsel for the respondent/plaintiff is that the lease created by agreement dated 01.11.1980 was determined by efflux of time and the lease deed dated 01.11.1980 vanished by efflux of time. The unregistered lease deed dated 01.11.1980 having been determined by efflux of time in the year 1984, the arbitration clause perishes along with the determination of original lease deed dated 01.11.1980 and cannot be availed of by the appellant/defendant. In the case of **ITC Ltd.Vs. George Joseph Fernandes and Another reported in AIR 1989 SC p. 839**, it has been held that where the dispute between the parties is that the contract itself does not subsist either as a result of its being substituted by a new contract or by rescission or alteration, that dispute cannot be referred to the arbitration as the arbitration clause itself would perish if the averment was found to be valid. As the very jurisdiction of the Arbitration (sic. Arbitrator) is dependent upon the existence of the arbitration clause under which he is appointed, the parties have no right to invoke a clause which perished with the contract A dispute as to the binding nature of the contract cannot be determined by resort to arbitration because the arbitration clause*

itself stands or falls according to the determination of the question in dispute”. As pointed out above in the instant case the agreement dated 01.11.1980 has been determined by efflux of time. There has been no fresh registered lease creating mutual rights and obligations by and between the parties including the arbitration clause and the payments of rents from 01.11.1984 have been under the correspondence referred to above.”

7. Similarity in *Union of India & Ors. Vs. Smt. Jagdish Kaur* AIR 2007 Allahabad 67, Allahabad High Court had considered similar situation and observed as under:-

*“ On point (B), it appears from clause 15 of the agreement that it provided for arbitration. The suit was instituted by the landlady on 01.07.2004 after expiry of term of agreement. Courts below have rightly held that after expiry of five years, the agreement was non-existent and the arbitration clause was not applicable. This view finds support from the law laid down by Hon'ble the Apex Court in *Union of India Vs. Kishori Lal Gupta and Brothers*, AIR 1959 SC 1362.”*

8. In *Ghulan Hassan Dar Vs. Controller of Aerodrome* AIR 1987 J&K 25, Jammu & Kashmir High Court had considered a similar situation and observed as under:-

“After the expiry of the period of licence and after the expiry of period of agreement nothing survives for arbitration. The arbitration clause was for any dispute or difference of questions having regard to the covenants and conditions of the agreement and in respect of rights, duties and liabilities and duties of the contracting parties.

This clause after the lapse of the agreement will cease to be effective because the petitioner's right as licensee has ended with the expiry of period of licence.”

9.

10.

11. I find that the trial Court rightly dismissed the application of the petitioner. This petition has no force and is hereby dismissed.”

6. A Special Leave Petition filed by the appellant, being SLP (Civil) No.5711/2009 against the aforesaid order was dismissed by the Supreme Court on 23.03.2009.

7. In the meanwhile, on 05.11.2008, the respondent filed an application under Order XII Rule 6 read with Orders XIV and XV and Section 151 CPC praying that a decree of possession be passed in favour of the respondent and against the appellant on the basis of the admissions made by the appellant in its pleadings and the documents admitted therein. Paragraph 4 of the said application referred to the following clear admissions made by the appellant:

(1) There was a landlord-tenant relationship between the appellant and the respondent; (2) There existed no registered lease deed, which meant the tenancy was from month to month only and not for a fixed term; (3) The 'rent' of the premises was Rs.15,000/- per month, i.e., above Rs.3,500/- per month; and (4) Notice to quit dated 30.08.2006 was duly served by the respondent on

the appellant.

8. In reply to the aforesaid application, the appellants asserted that the suit involved triable issues between the parties and stated that there was no admission on the part of the appellant with respect to the landlord-tenant relationship between the parties. There was also no admission as to the notice to quit or with respect to payment of any “rent” because the relationship between the parties was a business relationship. It was submitted that no rent @ Rs.15,000/- per month was being paid as Rs.15,000/- included sales commission also. It was denied that the defendant was a “tenant per-se”, and asserted that in fact there existed a business relationship between the parties and not simpliciter, a landlord-tenant relationship.

9. On 09.04.2009 the impugned judgment was passed by the learned trial court disposing of the application of the respondent/plaintiff under Order XII Rule 6 CPC by decreeing the suit for possession of the premises in question in favour of the respondent and against the appellant, granting six months' time to the appellant to relocate its business and vacate the premises. It was further made clear that in case the premises were not vacated within six months, i.e., till 12.10.2009, the respondent would be entitled to recover the possession of the premises through the process of the court. The present appeal arises from the aforesaid order.

10. Mr.Sandeep Sethi, the learned senior counsel for the appellant and Mr.Arun Mohan, the learned senior counsel for the respondent have been heard and the relevant documents adverted to by them have been perused. In the course of his submissions, Mr.Sandeep Sethi referred to the notice to quit dated 30.10.2006 and in particular to paragraph 10 of the said notice, which is reproduced as under:-

“10. That the contents of para no.8 are denied to the extent that the commission on sales have been discontinued, however, it is admitted that the same have been included in the consolidated rent of Rs.15,000/- per month.”

11. Mr.Sethi also referred to paragraph 12 of the reply to the aforesaid notice, which reads as follows:-

“12. That the contents of para no.10 are denied to the extent that the occupation of the premises by my clients is in terms of the aforesaid two agreements, it is not to be termed as a simple tenancy. However, the consolidated rent including the commission on sales in terms of the agreement is Rs.15,000/- per month. It is also admitted that the rent stands paid till date.”

12. Referring to the relevant paragraphs of the written statement, Mr.Sethi also contended that there was no clear or unequivocal admission on the part of the appellant so as to justify the passing of a decree under Order XII Rule 6 and, on the other hand, it had been averred by the appellant in its written statement that the relationship between the appellant and the respondent was not simpliciter that of landlord and tenant, but was a business relationship by

virtue of which the profits earned by the showroom being run in the suit property by the appellant were to be shared, as agreed to between the parties.

13. Rebutting the aforesaid contention of Mr.Sandeep Sethi, Mr.Arun Mohan, the learned counsel for the respondent contended that in a suit for ejectment of a tenant on a month to month lease in order to obtain a decree for possession based on admission, the plaintiff has to prove the following:-
(i)landlord-tenant relationship (ii)rent being above Rs.3,500/- per month and (iii)service of notice to quit. In the instant case, all three pre-conditions had been fulfilled. In the context of landlord-tenant relationship, the admission was contained in the reply dated 30.10.2006 to the notice to quit. The admission that the rent was above Rs.3,500/- per month and the service of the notice terminating the tenancy also stood proved from the notice to quit and the reply thereto.

14. It was also submitted by the counsel for the respondent that the covering letters given along with monthly cheques for the period from February, 2005 to 07.08.2006, i.e., before the notice to quit was served, used the words, “**Rent for the month of**”. TDS Certificates issued by appellant for the year 2004-05, 2005-06 and 2006-07 also show “**Nature of Payment**” as “**Rent u/s 194 I**” of the Income Tax Act.

15. Mr.Sandeep Sethi, the learned senior counsel for the appellant in

rejoinder contended that the aforesaid documents, i.e., the covering letters given along with the monthly cheques and the TDS certificates could not be looked into by this Court at this stage as the said documents were not admitted documents and their worth could only be ascertained after the parties had adduced their respective evidence and not at the present stage.

16. Even accepting the aforesaid contention of the learned counsel for the appellant and for the time being, eliminating the said documents, that is, the rent receipts and the TDS certificate from consideration, I am of the view that the appellant in its pleadings having clearly admitted that there was a landlord-tenant relationship, that a consolidated rent of Rs.15,000/- per month was being paid by it to the respondent and also that the respondent had served upon the appellant the notice to quit, which was replied to by the respondent, there was no impediment to the passing of a decree for ejectment on the aforesaid admissions, leaving the question of mesne profits to be tried on the basis of evidence adduced by the parties [*See Surjit Sachdeva Vs. Kazakstan Investment, 66 (1997) DLT 54; Samir Mukherjee Vs. Devinder K.Bajaj, 71(1998) DLT 477; Vikas Theatres Vs. Punjab & Sind Bank, 71 (1998) DLT 526; Shukla Malhotra Vs. Vyasa Bank Ltd., 73(1998) DLT 124; Amar C.Talwar Vs. Export Promo Council, 77(1999) DLT 809; Deenar Builders Vs. Khoday Distilleries, 82(1999) DLT 809; Zulfiquar Ali Khan Vs. Straw*

Products, 2000 VI AD (Delhi) 347; Jasmer Singh Vs. Electronics Trade & Tech (2002) I AD (Delhi) 281; R.K.Aggarwal Vs. ITDC, 1997(1) RCR 401; Uttam Singh Dugal Vs. UBI, (2000) 7 SCC 120; and Delhi Jal Board Vs. Surendra P.Malik, 104 (2003) DLT 151].

17. It is settled law that admissions need not be made expressly in the pleadings. Even on the constructive admissions Court can proceed to pass a decree in plaintiff's favour. In order to invoke the provisions of Order XII Rule 6 CPC, admissions ***de hors*** pleadings may also be considered as is evident from the use of the word “otherwise” in the said provision. [See ***Shikharchand vs. Mst. Bari Bai, AIR 1974 MP 75; K. Kishore vs. Allahabad Bank, 1997 (41) DRJ 698; Uttam Singh Dugal vs. UBI, (2000) 7 SCC 120; Rajiv Srivastava vs. Sanjiv Tuli, 119 (2005) DLT 202; Rama Ghei vs. U.P. State Handloom Corpn., 91 (2001) DLT 386 and R.N. Sachdeva vs. R.L. Mahajan Charitable Trust, 1997 (41) DRJ 698***]. Such admissions may be contained in documents written or executed between the parties before the action is brought or even from the statements of parties recorded in the Court, including statements recorded under Order X Rule 1 CPC. Admissions may also be gleaned from vague and unspecific denials made in the pleadings and documents, which on the face of it appear to have been deliberately made in order to mislead the Court, or gathered from the non-traversal of specific

averments made in the pleadings and documents.

18. It is the bane of the judicial system that with a view to protract and drag on the case, a litigant who is a wrong-doer often takes all sorts of false and legally untenable pleas. Such litigants should not be allowed to hijack the judicial process and to subvert the cause of justice. Where it is palpably clear to the Court that the defence is with the sole purpose of protracting the proceedings to the advantage of the wrongdoer and the disadvantage of the aggrieved party, it becomes the bounden duty of the Court to save the latter from going through the rigmarole of a futile and expensive trial. For this, the Court has been invested with sweeping powers by a number of provisions in various statutes, the most potent of which are the provisions of Order XII Rule 6 read with Order VIII Rules 3 and 4 CPC. Regrettably, the said provisions, though exploited by the Courts to the advantage of the judicial process, have yet to reach the optimum level of exploitation. It thus becomes imperative on this Court to use the powers reposed in it to prevent misuse of the judicial process, to cut short laws' delays and to save the aggrieved party from the travails of a long drawn out litigation, often outliving his life span itself and falling into the lap of his survivors.

19. As regards the plea of the appellant's counsel that the trial court has failed to appreciate that, the question whether the agreement dated 16.08.1978

was in fact a business agreement or purely a tenancy agreement was an issue in dispute, I am of the view that the findings of this Court in Civil Revision Petition No.166/07 on this aspect of the matter are conclusive and binding in the instant appeal as well. This Court in the former case between the same parties having held that an oral tenancy on a month to month basis existed between the parties and the said finding having withstood the test of appeal before the Supreme Court, it is no longer open to this Court to hold that there was a business relationship subsisting between the parties and that too in the teeth of the clear admission of landlord-tenant relationship by the appellant. The principle of *res judicata*, as is well known, would not only apply in different proceedings arising out of the same cause of action but would also apply in different stages of the same proceedings so that if an issue has been decided at an earlier stage against a party it cannot be allowed to be re-agitated by him at a subsequent stage in the same suit or proceedings. [***See Satyadhyan Vs. Smt. Deorajin Debi, AIR 1960 SC 941; Arjun Singh Vs. Mohindra Kumar, AIR 1964 SC 993; C.V.Rajendran Vs. N.M.Muhammed Kunhi, (2002) 7 SCC 447; Ishwar Dutt Vs. Land Acquisition Collector, (2005) 7 SCC 190 and Barkat Ali vs. Badri Narain (D) by LRs (2008) 4 SCC 615***].

20. Even otherwise, I am of the view that the respondent is entitled to a decree for possession in view of the definition of “rent”, as set out in Section

105 of the Transfer of Property Act, 1882, which reads as follows:-

“105. Lease defined-A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined-The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

21. A bare glance at the aforesaid section shows that the transfer of right to enjoy immoveable property may be made in lieu of money, a share of crops, service rendered or any other thing of value to be rendered periodically or on specified occasions to the transferor by the transferee; and the money, share, service or other thing to be so rendered is called the rent. A lease is thus a transfer of a right to enjoy immovable property for monetary or other consideration. Thus, it is not difficult to conceive of a lease of an immoveable property, with a landlord-tenant relationship between the parties, in lieu of a share of profits or in lieu of commission paid or even in lieu of a service rendered.

22. To conclude, on admitted facts, the respondent is entitled to a decree for possession in his favour and the view taken by the learned trial Judge is manifestly correct. No ground for interference has been made out. The appeal

is devoid of merit and deserves to be dismissed.

23. RFA 274/2009 and CM No.10578/2009 are accordingly dismissed with costs.

REVA KHETRAPAL, J.

February 9, 2010
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