

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

+ **RFA (OS) No.79/2009 & C.M. No.14129/2009**

% **Judgment reserved on: 08.03.2010**
Judgment delivered on: 18.03.2010

SH. VIMAL KHANNA & ANR. Appellants
Through: Mr. Rishi Maheshwari, Adv. with
Ms. Naomi Chander, Adv.

Versus

SH. KISHAN CHAND KHANNA Respondent
Through: Mr. Alok Aggarwal, Adv.

CORAM:
HON'BLE MS. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE MANMOHAN SINGH

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

MANMOHAN SINGH, J.

1. Regular First Appeal from the Original Side has been filed by the two appellants namely Vimal Khanna and Simmi Khanna against the Order and Judgment dated 6th August, 2009 passed by the learned Single Judge in CS (OS) No. 1162/2007 wherein the application filed by the respondent under Order XII Rule 6 read with Section 151 of Code of Civil Procedure being F.A. No. 15614/2008 was allowed by decreeing the suit of the Respondent. The appellants were given one month's time to vacate the Ground Floor of the suit property bearing No. AE-95,

Shalimar Bagh, Delhi and hand over peaceful possession thereof to the respondent.

2. The brief facts of the matter before the learned Single Judge in the suit for possession, injunction and mesne profit filed by the respondent are that the respondent is a senior citizen aged about 76 years. The appellant Nos. 1 and 2 are the son and daughter-in-law respectively of the respondent.

3. The respondent was allotted a plot by the DDA measuring 200 square yards in the year 1982. The entire consideration for the purchase of the said plot was paid by the respondent from his own earning and sources. Subsequently the respondent applied for conversion of his lease hold rights in the plot to free hold, on payment of conversion charges, and the DDA issued a Conveyance Deed in favour of the respondent.

4. The respondent has two sons and three daughters. All the children are married. The respondent and his wife Smt. Prem Lata Khanna are residing on the First Floor of the suit property, their elder son Mr. Kamal and his family are in possession of the Second Floor whereas appellants Vimal Khanna and Smt. Simmi Khanna are residing on the Ground Floor of the premises in question.

5. It was also stated in the plaint that the appellant No. 1 as well as the elder son of the respondent have their own flats situated at Shri Sai Baba Group Housing Cooperative Society, Sector-9, Rohini, Delhi which were purchased by the two sons with the financial assistance of the

respondent. The appellant No. 1 got married with appellant No. 2 in the year 1985.

6. Out of love and affection, the appellants were permitted to occupy the Ground Floor of the house. It was stated in the plaint that the conduct of the appellants had become extremely disturbing and the appellants required the respondent to execute a Release / Relinquishment Deed in respect of the suit property to the respondent.

7. Because of the hostile activities of the appellants, the respondent was compelled to disown the appellant No. 1 for which public notice was published way back in March, 2005. However, due to intervention of common friends and relatives, an undertaking was given by the appellants to maintain peace in the family and subsequently, they were permitted to continue residing in the suit property.

8. Further, the case of the respondent was that the appellants in fact had openly threatened the respondent that in case he did not execute a Deed of Release for the property in their favour, they would cause grievous injury to the respondent and there were various instances/acts alleged as regards the bad behaviour and harassment meted out by the appellants vis-à-vis the respondent.

9. It was also stated that the respondent as well as his wife are suffering from ailments including arthritis and are unable to climb stairs and thus requested the appellants to let them reside on the ground floor of the suit property. However, the appellants declined the said request. Therefore, the suit for possession/injunction and mesne

profit was filed by the respondent against the appellants for eviction of the latter from the Ground Floor of the suit property.

10. After filing of the Written Statement by the appellants, the respondent filed the application under Order XII Rule 6 of Code of Civil Procedure for passing a decree on the basis of admission made by the appellants. The learned Single Judge allowed the application by the Order/Judgment dated 6th August, 2009 and decreed the suit for possession and directions were issued to the appellants to vacate the ground floor of the suit property and hand over peaceful possession thereof within one month from the date of passing the said Order.

11. The appellants have now challenged the said Order and Judgment passed by the learned Single Judge by filing of the present appeal under Section 96 of the Code of Civil Procedure which has been heard by us with the consent of the parties.

12. The main challenge in the appeal filed by the appellants is that in the year 1973-74, the appellant No. 1 joined and actively participated in the joint family business run by the respondent in the day time and admitted Zakir Hussain Evening College to complete his graduation. It was stated in the Written Statement that that in the year 1974, a partnership firm under the name and style of M/s. Rajneesh Textiles was started under the partnership of the respondent and his wife. The respondent being the head of the family was collecting the income of all the members of the family and making expenditures on behalf of all the members of the family jointly. It was also stated in the Written Statement that in the marriage of the daughters in the year 1987 as

well as in the firm M/s Rajneesh Textiles, the appellant No. 2, who is wife of appellant No. 1, substantially and financially helped the respondent.

13. Order XII Rule 6 of the Code of Civil Procedure, no doubt, is a discretion which is to be exercised by the Court judiciously on the facts and circumstances of each matter. It is settled law that a judgment can be passed on unequivocal and unambiguous admission. The object of the said provision is to obtain a speedy justice if an admission is made by a party against the claim made by the other party.

14. In the present case the following are the admissions made by the appellants:-

- (a) It is unequivocally admitted by the appellants that the respondent was the owner of the suit property which was allotted to him by the DDA in the year 1982.
- (b) The Conveyance Deed was also issued by the DDA in favour of the respondent.
- (c) The appellants have also admitted that the construction of the above mentioned plot was started in the year 1982 and was completed in the year 1983.
- (d) Admittedly, the appellant No. 1 was married with the appellant No. 2 on 12th February, 1985. There is no denial by the appellants that partnership firm in the name and style of Rajneesh Textiles was started in the year 1974 wherein the respondent and his wife Smt. Prem Lata were partners and appellant No. 1 was not a partner of the firm.

- (e) As per their own admission, it is stated in the Written Statement that appellant No. 1 became the partner of the above mentioned firm only in the year 1992.
- (f) Admittedly the appellant No. 1 failed to produce any cogent evidence on record to show that any money was paid by him to the respondent at the time of purchase of the suit property or for construction of the house thereon.

15. From the pleadings before the learned Single Judge and after having gone through the grounds raised by the appellants in the appeal, it appears to us that so far as the prayer of the subject matter of the present dispute for the possession of the suit property on the Ground Floor of AE-95, Shalimar Bagh, Delhi is concerned, there are admissions made by the appellants in the Written Statement, as referred in paragraph 14 of our judgment. It is a matter of fact that when the property was purchased and construction was carried out by the respondent, the appellants were not married. Secondly, the appellant No. 1 became a partner in the family business only in the year 1992, therefore, it appears that the defence raised by the appellants before the learned Single Judge was incongruous and also flimsy as the same was raised without any valid evidence which is startlingly clear from the fact that the appellants earlier agreed to vacate the concerned floor of the suit property and wanted to settle the matter when the matter was listed before the court on 10th December, 2007 and the following order was passed:-

“The parties are likely to settle the matter. I am told that the defendants have shifted their residence temporarily to Gurgaon but they have not vacated the premises in question and they are still under defendant’s lock and key. Defendants state that they be given a month’s time either to shift to the rented premises or their own house.”

16. As far as the financial assistance by the appellant No. 2 is concerned, it is an admitted position that on the date of construction of the property, the appellants were not married. For the relevant period when the plot was allotted by the DDA in 1982 and constructed in 1983, there is no cogent evidence placed on record by the appellants to show that any amount has been received by appellant no. 1 from M/s. Rajneesh textiles and paid to the respondent. The appellants have admitted in the Written Statement that they are already in possession of a flat in Rohini.

17. The respondent has denied the said claim of the appellants against the respondent. In the face of denial and the failure of the appellants to produce any evidence as regards the claims made by the appellants in the written statement, this Court is of the view that no trial in the main suit is required on the basis of the admitted facts by the parties.

18. In a similar situation, this Court in the case of **Ashoka Estate Pvt. Ltd. & Ors. Vs. Dewan Chand Builders Pvt. Ltd. and Ors.** reported as 159 (2009) DLT 233 held as under :

“26. The plaintiffs if otherwise found entitled to a decree on admissions, cannot be deprived thereof by astute drafting of the written statement and/or by taking pleas therein which have no legs to stand upon. This Court is to read the pleadings of the parties meaningfully. Issues are to be framed on material and not all propositions of law and fact. A plea, which on the face of it is found by the Court to be untenable, does not require the framing of any issue. The pleas of the defendants in the present case are found by me to be such, without calling for any trial whatsoever. If the said pleas of the defendants on the basis whereof the admitted liability of the defendants is sought to be defeated, are found to be untenable, naturally the impediment to the passing off a decree on the basis of admissions disappear. The Apex Court in **T. Arvindam v. T.V. Satyapal**, AIR 1977 SC 2421 has held that if on a meaningful — not formal — reading, claim is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the trial Court should ensure that bogus litigation is shot down at the earliest stage. Again, in **Liverpool & London S.P. & I Association Ltd. v. M.V. Sea Success I & Another**, (2004) 9 SCC 512 it was held that when no cause of action is disclosed, the Courts will not unnecessarily protract the hearing of suit; the Court should interpret the provisions in such a manner so as to save expenses, achieve expedition and avoid the Courts resources being used up in cases which will serve no useful purpose. It was further held that a litigation which in the opinion of the Court is doomed to fail should not further be allowed to be used as a device to harass. The said propositions equally apply to written statements/defence to the claim also.”

19. Similar is the situation in **Raj Gopal (HUF) Vs. State Bank of India**, 79 (1999) DLT 229, wherein it was observed as under :

8. The purport of Rule 6 of Order 12 of the Code of Civil Procedure is to enable the party to obtain speedy judgment atleast to the extent of the relief which, according to the admission of the other party; he is entitled to. The Division Bench of this Court in **Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd. & Others**, reported in 66 (1997) DLT 54 has held that admission on which judgment could be claimed must be clear and unequivocal one and that such an admission made in the suit or even for a part of the claim enables a party to get a decree passed to the extent of the admission. The aforesaid proposition of law laid down by the Division Bench of this Court is well settled

that in case of clear and unequivocal admissions the suit could be decreed which may be whole or in part for one of the reliefs. In the aforesaid case the Division Bench also laid down the factors which deserve to be taken into consideration to enable the Court to pass a decree in plaintiff's favour as regards possession in such like suit which are—(a) existence of relationship of lessor and lessee or entry in possession of the suit property by defendant as a tenant; and (b) determination of such relation in any of the contingency, as envisaged in Section 111 of the Transfer of Property Act. It was also held that an unequivocal admission of the above two factors would entitle the plaintiff to a decree for possession and that such admission need not be made expressly in the pleadings. Even on constructive admissions the Court can proceed to pass a decree in plaintiff's favour."

20. It appears to us that the Respondent had clearly made out a strong case before the learned Single Judge to pass the order under the provision of Order VII Rule 6 of the CPC in favour of the Respondent. Besides, under Order XV Rule 1 of the CPC also, the Court is empowered to pass such an order where it appears that the parties are not at issue on the question of law and fact and pronounce the judgment at once.

21. The appeal is without any force and we find that the order and judgment passed by the learned Single Judge is not to be interfered with. The appeal is, therefore, dismissed with no order as to costs.

MANMOHAN SINGH, J.

VIKRAMAJIT SEN, J.

March 18, 2010
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