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

% Judgment dated on: 15.07.2010

+ RFA 473/2009 & CM.No.17841/2009

CEMENT CORPORATION OF INDIA

Through : ITS CHAIRMAN

..... Appellant

Through : Mr.Rakesh Tiku, Advocate for appellant.

versus

BRIGADIER MR.G.S. GOSHAL (RETD.)

..... Respondent

Through : Ms.Shantha Devi Raman, Advocate for
the respondent.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

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

G.S.SISTANI, J. (ORAL)

1. Admit.
2. With the consent of counsel for the parties, present appeal is set down for final hearing and disposal. Counsel for the parties submit that it would not be necessary to call for the lower court record as the pleadings and documents sought to be relied upon by them have already been filed in this court.
3. Present appeal is directed against the judgment and decree dated 06.08.2009, by virtue of which an application filed by the plaintiff (respondent herein) under Order 12 Rule 6 CPC has been allowed and a decree for possession of flat bearing No.204, second floor, measuring 530 sq. ft. which is part of property situated at CCI, House no.87, Nehru Place, Delhi has been passed.
4. Mr.Tiku, counsel for the appellant submits that trial court has acted in an erroneous manner and totally mis-directed itself and has assumed that there were admission made on the part of the appellant in the written statement, justifying passing of the

impugned judgment and decree. It is further submitted that there was no unequivocal or unambiguous admission on the part of the appellant and thus it was not a fit case for the trial court to have exercised its discretion for passing a decree in this case. It is next contended by Sh.Tiku that the trial Judge has mis-construed the scope of law as laid down in the judgments which have been relied upon by the respondent, as every judgment is an authority for which it actually decides on facts and it is only the legal principles which shall be applicable, depending on the facts of each case. Learned counsel for the appellant further submits that this aspect of the matter was completely lost sight by learned trial court, who has wrongly applied the ratio of the judgments to the present case.

- 5.** Counsel for the appellant submits that the appellant had taken on lease the premises initially from M/s.Pal and Associates Pvt. Ltd. w.e.f. 15.10.1979 for a period of three years in terms of a lease deed dated 22.09.1979. The respondent herein had purchased the premises in question on 18.01.1980 and thereafter entered into a rent agreement dated 01.03.1980 with the appellant. The initial rent was fixed at Rs.1669.50 per month, which was to be increased after three years @ 10% and as such the lease stood renewed after every three years. Mr.Tiku, also submits that the rent for the suit premises was increased in November, 2003, which comes to Rs.3578/- and for the period from October, 2006 to October, 2009 the rent was increased by 10% which comes to Rs.3937/-. Counsel further submits that the appellant had a right to seek further extension of the lease for another period of three years from the year 2009 onwards subject to increase of 10%. It has been contended that the landlord could not have terminated the lease by the notice to quit dated 24.07.2004 which was issued under section 106 of the Transfer of Property Act.
- 6.** Counsel for appellant next submits that the appellant is a Government undertaking, which has been operating its office from the suit premises since the year 1979 and great inconvenience

would be caused to the appellant in case the suit premises is vacated.

7. Counsel for respondent submits that the premises were let out to the appellant w.e.f. 15.10.1979 initially for a period of three years. Admittedly, the respondents herein purchased the premises on 18.01.1980 and a rent agreement was executed between the parties on 01.03.1980. The rent agreement was renewed up to 1994 and a notice to quit was issued to the appellant on 24.07.2004 and thereafter on 26.07.2006 the tenancy stood terminated. Counsel for respondent submits that relationship of landlord and tenant has not been denied, the rate of rent of Rs.3937/- per month which is over Rs.3500/- has also not been denied. The appellant has also not denied receipt of notice thus the trial court has rightly exercised its discretion under Order 12 Rule 6 and passed the decree.
8. I have heard counsel for the parties and given my thoughtful consideration to the matter.
9. It was observed in the case of ***Rajiv Sharma and Another Vs. Rajiv Gupta***, reported at (2004) 72 DRJ 540, that the purpose of Order XII Rule 6 of the CPC is to enable a party to obtain speedy justice to the extent of relevant admission, which according to the admission, if the other party is entitled for. Admission on which judgment can be claimed must be clear and unequivocal.
10. In the case of **Ms.Rohini Varshnei Vs. R.B.Singh**, 155 2008 DLT 440, Division Bench of this Court has held:

“It is trite to say that in order to obtain a judgement on admissions, the admissions must be clear and unequivocal. In the matter of landlord and tenant, there are only three aspects which are required to be examined:

- (i) A relationship of landlord and tenant;
- (ii) Expiry of the tenancy by efflux of time or determination by valid notice to quit; and
- (iii) The rent of the premises being more than Rs.3,500/- per month in view of the provision of the said act.”

11. Reading the provisions of Order XII Rule 6 CPC would show that a decree can be passed either on admission of facts or on question of law. Almost similar question arose for consideration in **I.T.D.C. Ltd. vs M/s Chander Pal Sood & Sons,:** 84(2000)DLT337 before the Division Bench of this Court. In face of the admission as to the relationship of landlord and tenant, the service of notice terminating the tenancy, the tenant was required to vacate the premises by the end of the tenancy and the fact that the tenancy was month to month basis the court came to the conclusion that nothing survives in the defence of the tenant and a decree of possession could be passed on admitted facts. The other pleas raised by the defendants in the written statement were held to be of no relevance
12. Applying the settled principles of law to the facts of this case and reading of the written statement would show that the appellants have admitted that respondents are the owners/ landlord of the suit premises. The rate of rent has also not been denied, which is over Rs.3500/-, nor receipt of the legal notice has been denied. In the absence of a registered lease deed, the tenancy was extended from month to month. Admittedly there is no registered lease deed, thus the appellant cannot derive any benefit of the submission that the lease was simply to be renewed on the increase of 10% rent every three years.
13. Since the appellant has failed to point out any infirmity in the legal notice nor the receipt thereof has been denied; and that the appellant has also not denied that the last paid rent was Rs.3937/- per month which was in excess of Rs.3500/- and in the absence of any registered lease deed, it cannot be said that the landlord was bound to renew the lease every three years.
14. There is no force in the submission of counsel for the appellant that mere acceptance of the rent, amounts to creation of a fresh lease after issuance of notice to quit. In the case of **Central Bank of India Vs. Shri Lalit Kumar Bhargava (HUF)**. 2006 V AD (DELHI) 169, it was held as under:

“12. The law is well-settled that no tenant can be allowed to retain possession of the tenanted premises without payment of rent/ damages for its use and occupation. The law is equally well-settled through a catena of judgments, both of High Courts and of Supreme Court, that mere acceptance of rent after service of notice to quit does not amount to create of a new tenancy and that the notice to quit is not waived by mere acceptance of rent.”

15. Accordingly, I find no infirmity in the judgment and decree passed by the trial court. Counsel for the appellant has submitted that in case reasonable time is not granted to vacate the premises, the appellant shall suffer acute hardship. Although this cannot be a ground to grant time, however, counsel for respondent on instructions states that respondent would have no objection if the time is granted upto 28.01.2011 to the appellant to vacate the premises subject to their filing an undertaking to the effect that (i) appellant would continue to pay rent/ damages for use and occupation charges; (ii) appellant shall also pay water and electricity charges and shall also clear arrears, if any; (iii) appellant shall hand over possession of the premises on or before 28.01.2011 in the same/better condition as it was taken. Let the undertaking be filed within ten days from today. In case an undertaking is filed within ten days from today, the decree shall not be executed, subject to the terms of the undertakings, however, in case the undertaking is not filed, the appeal would stand dismissed.
16. In view of above, appeal and application stand disposed of.

G.S. SISTANI, J.

July 15, 2010
'aj/ssn'