

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

% *Date of Judgment: 14.03.2011*

+ **RSA No. No. 62/2002**

OM PRAKASH MALHOTRA Appellant
Through: Mr. Vikas Dhawan, Mr. Sunil
Singh and Mr. S.P. Das,
Advocates.

Versus

SHANKAR LAL AGGARWAL Respondent.
Through: Mr. S.S. Gautam, Advocate.

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)

1 This appeal has impugned the judgment and decree dated 11.01.2002 which had reversed the findings of the trial Judge dated 20.10.2001 whereby on an application under Order 12 Rule 6 of the Code of Civil Procedure (hereinafter referred to as the 'Code') the suit of the plaintiff Om Prakash Malhotra seeking possession of the suit property i.e. property comprising of ground floor, D-308, Sarvodya Enclave, New Delhi has been decreed in his favour. Impugned judgment has reversed this finding; suit of the plaintiff was remanded back for trial

2 The plaintiff had filed the present suit for possession qua the aforementioned suit property. His contention was that the defendant

was inducted as a tenant in the suit property vide registered lease deed dated 09.10.1979 for a limited period of five years. This was w.e.f.01.10.1979. Lease was residential. Thereafter by mutual agreement, the period of tenancy was extended; the first extension was w.e.f. 01.10.1984 to 30.09.1987. This was in terms of an agreement dated 04.04.1985. Thereafter in terms of an agreement dated 21.07.1988, the tenancy was again extended for three years w.e.f. 01.10.1987 to 30.09.1990. Lastly in terms of an agreement dated 14.01.1991, the tenancy was extended for a period of five years i.e. w.e.f. 01.10.1990 till 30.09.1995. Further contention of the plaintiff is that vide notice dated 03.08.1995 sent by registered post, the tenancy of the defendant was terminated w.e.f. 30.09.1995 requesting the defendant to handover the vacant and peaceful possession of the suit property to the plaintiff. He did not comply with the same. The plaintiff has specifically averred that the rent of the suit property was ₹41,00/- of which ₹2,700/- was being paid as a rent and ₹1,400/- was being paid for hire of fittings and fixtures; this hire of fittings and fixtures is a part of rent and consolidated monthly rent was ₹4,100/-. The last rent was paid up to 30.09.1995. This is a averment in para 6 of the plaint.

3 The defendant had filed his written statement. It was denied that the rate of rent was ₹4,100/-. It was contended that the last rent agreed between the parties was ₹2,700/- and ₹1,400/- was the hire charges for fittings and fixtures; both were separate figures. The rent being below ₹3,500/-, bar of Section 50 of the Delhi Rent Control Act (hereinafter referred to as the 'DRCA') became applicable; Civil Court had no jurisdiction to entertain the suit. It was denied that the legal notice terminating the tenancy of the

defendant had been received by the defendant; receipt of notice had been denied. In para 10 of the preliminary objections, it had been stated that even after 30.09.1995 rent had been tendered i.e. for the months of October and November, 1995 by account payee cheque dated 15.11.1995.

4 Replication was not filed.

5 Issues were framed. Trial was in progress. PW-1 was examined in part. At this stage, the present application under Order 12 Rule 6 of the Code was filed. The averments made in the plaint were reiterated; in para 4 of the application it was specifically stated that the tenant had paid rent up to 30.09.1995. It was contended that the ingredients of a decree to follow under Order 12 Rule 6 of the Code had been made out.

6 Reply filed to the present application had controverted this stand. However, there was no specific denial in para 4 to the specific averment made by the applicant that the tenant had paid rent up to 30.09.1995.

7 These are the pleadings between the parties. It is not in dispute that first document of lease i.e. for the period between 01.10.1987 to 30.09.1990 was a registered document. Thereafter, all subsequent extensions of lease were by unregistered documents. The contention of the defendant/respondent is that since an unregistered document cannot be read in evidence, lease between the parties thereafter necessarily has to be treated as a lease on a month to month basis. Notice Ex. PW-1/8 dated 03.08.1995 had been specifically denied in the written statement. Attention has been drawn to para 4 of the said written statement. It is pointed out that there is no admission which had accrued in

favour of the plaintiff and thus the impugned judgment had rightly recorded that no decree under Order 12 Rule 6 of the Code could have followed.

8 The appellant has impugned the judgment. He is landlord. He is aggrieved by the fact that although the trial Judge had decreed the suit of the plaintiff for possession under Order 12 Rule 6 of the Code, the impugned judgment had set it aside.

9 This is a second appeal. It has been admitted on 03.03.2011 and the following substantial question of law was formulated:-

“Whether the findings in the impugned judgment dated 11.01.2002 reversing the judgment of the trial court whereby the suit of the appellant/plaintiff stood decree under Order 12 Rule 6 of the Code of Civil Procedure was a perverse finding? If so, its effect?”

10 It is not in dispute that to obtain a decree of possession of the suit property under Order 12 Rule 6 of the Code, there are three necessary ingredients which have to be established by the plaintiff/landlord i.e. (i) relationship of landlord-tenant has to be proved, (ii) rent is more than ₹3,500/- and (iii) tenancy has been validly terminated. The contention of the respondent/defendant is that rent was below ₹3,500/-; rent was ₹2,700/- and the hire charges for fittings and fixtures was ₹1,400/-; payments were made by two cheques and receipts were also issued separately for two amounts. Bar of Section 50 of the DRCA was clearly attracted. On this count, learned counsel for the appellant has placed reliance upon judgments reported in Karnani Properties Ltd. Vs. Augustin SCR 20, (2002) 5 SCC 51 Abdul Kader Vs. G.D. Govindaraj as also the third judgment of this Court reported in 1995 RLR 254 Inder Vijay Singh Vs. NDMC. It is contended that the fittings and fixtures

are necessarily to be treated as a part of the rent and this has been upheld by the aforementioned judgments.

11 In Karnani Properties Ltd. (Supra) while dealing with the applicability of provisions of DRCA for the purpose of fixation of standard rent, the Apex Court relying upon the observations of Alliance Property Co. Ltd. Vs. Shaffer (1948) 2 K.B. 464 held as under:-

“The term “rent” has not been defined in the Act. Hence it must be taken to have been used in its ordinary dictionary meaning. If, as already indicated, the term “rent” is comprehensive enough to include all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also of furnishings, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord, the conclusion is irresistible that all that is included in the term “rent” is within the purview of the Act and the Rent Controller and other authorities had the power to control the same. In view of these considerations we overrule the first contention raised on behalf of the appellant.”

12 The Apex Court in Abdul Kader (Supra) while examining the provisions of T.N. Buildings (Lease and Rent Control) Act, 1960 where the term ‘rent’ came up for interpretation. Relying upon the ratio of Karnani Properties, it was held as follows:-

“5. The term “rent” has not been defined in the Act and therefore, we shall have to go by the ordinary dictionary meaning of the term “rent”. As held in Karnani Properties Ltd. V. Augustine (Miss) the term “rent” is comprehensive enough to include, all payments agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also furnishing electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. It was very fairly conceded by learned counsel for the appellant that ever since the decision of this Court in the case of Karnani Properties Ltd. the view being taken consistently by the High court of Madras is that in the event of taxes having been agreed to be paid by the tenant, the same forms part of the rent. [To wit, see Raval and Co. V. K.G. Ramachandran (minor).] Thus, there is no doubt that the amount of taxes which was agreed to by the tenant to be paid to the landlord was a part of the rent and the word “rent” in Section 10(2)(i) of the Act has to be construed accordingly”.

13 It was further held that the taxes to be paid by the tenant would also become a part of rent.

14 In Inder Vijay Singh (Supra) there were two agreements; the petitioner had let out his flat by lease agreement for ₹15,000/-. By another agreement of same date, the petitioner had hired out fixtures and fittings consisting of Air-conditioners, fans, tube, lights, geysers, washbasins etc. for ₹12,000/-. Two leases were executed on the same date and were to expire also concurrently. Applying the ratio of Karnani Properties, a Bench of this Court had held that amount payable by way of fittings and fixtures would be included in the term 'rent'. Relevant extract of the said judgment reads as follow:-

"7. The term 'rent' is comprehensive to include all payments agreed by the tenant to be paid to the landlord for the use and occupation not only of building and its appurtenances but also of other amenities agreed between the parties to be provided by and at the cost of the landlord in terms of aforesaid decision. Further, this Court can also take judicial notice of the prevailing practice of parties entering into agreements, like the one in the present case, bifurcating the rent and showing a part as rent of the premises and a part as rent of furniture and fixtures, with a view to circumvent law relating to assessment of House Tax. As already noticed, in this case both the agreements were entered into on the same date and the hire agreement was to stand automatically terminated once the lease agreement is terminated. On the facts of the case, in our view, there is not illegality in determining the annual value on the basis of rent of Rs. 27,000/- per month."

15 In the present case as well, admittedly there were two agreements between the parties. The first agreement entered into between the parties is dated 14.01.1991 by virtue of which the term of the lease stood extended up to 30.09.1995. The rate of rent was described as ₹2,700/-. Vide hire agreement of the same date i.e. 14.01.1991, hire charges for the various items (mentioned in the annexure along with), had been agreed at ₹1,400/- per month.

This agreement also stood terminated as and when the lease was determined. A specific finding that both the agreements would be terminated on the same date had been taken into account in the case of Inder Vijay Singh to arrive at a finding that this hire charges for fittings and fixtures was necessarily intended to be a part of the rent; agreement for fittings and fixtures filed in the present case also included tube lights, washbasins, fans which was also so in the said case.

16 It is thus evident and clear that the rent of the aforementioned property was a consolidated rent; even though the nomenclature of the two agreements was a lease agreement and hire charge agreement for fittings and fixtures. The bar of Section 50 of the DRCA was clearly not attracted. The rent being above ₹3,500/- i.e. ₹4,100/-, the Civil Court had jurisdiction to entertain the suit.

17 For obtaining a decree under Order 12 Rule 6 of the Code, the landlord has to show that the tenancy has terminated. For this proposition, learned counsel for the appellant has drawn attention of this court to the averments in para 2 of the plaint. In para 2 it has been specifically stated that the lease had been extended from time to time and the last extension was w.e.f. 01.10.1990 till 30.09.1995; the corresponding para of the written statement has also been perused. The submission in the written statement is that limited tenancy could not be effected without obtaining the necessary permission as is mandated under 21 of the DRCA. There is no specific denial to the averment made in para 2 of the plaint that the tenancy had stood extended lastly up to 30.09.1995. So also is the position in para 3 of the plaint and the corresponding para 3 of the written statement. There is a specific averment in the

plaint that the tenancy expired on 30.09.1995 and the tenant had agreed to restore the possession of the property in a good condition back to the plaintiff. In the corresponding para of the written statement, the defendant had denied that he had agreed to restore the possession in a good condition; there was no denial that the tenancy did not expire on 30.09.1995; only objection being that a limited tenancy could not be created under Section 27 of the DRCA without permission.

18 The contention of the learned counsel for the appellant is that an evasive denial is no denial and in fact amounts to an admission. Such an admission entitles the plaintiff to a decree. His contention is that the tenancy had expired by efflux of time on 30.09.1995; no separate notice under Section 106 of the Transfer of Property Act (hereinafter referred to as the 'TPA') was required. In (2008) 7 SCC 85 Gautam Sarup Vs. Leela Jetly and Others, provisions of Section 58 of the Evidence Act, 1872 had been noted as follows:-

"16. A thing admitted in view of Section 58 of the Evidence Act need not be proved. Order 8 Rule 5 of the Code of Civil Procedure provides that even a vague or evasive denial may be treated to be an admission in which event the court may pass a decree in favour of the plaintiff. Relying on or on the basis thereof a suit, having regard to the provisions of Order 12 Rule 6 of the Code of Civil Procedure may also be decreed on admission."

19 Attention has been drawn to Section 111 of the TPA and the various modes of termination of tenancy as contained in sub clause (a) to (h). There are eight such modes of terminating a tenancy. Under Section 111 (a) where the tenancy had expired by efflux of time, a separate notice is not required. This has been held in 2008

LE (Del) 56 Shri Ram Pistons and Rings Ltd. Vs. C.B. Aggarwal HUF and Ors. Para 72 is relevant. It reads as under:-

"It is no longer res integra that there is no requirement of service of notice to determine a tenancy as envisaged under Section 106 of the Transfer of Property Act in case where a lease of immovable property is determined by any one of the modes prescribed under Clauses (a) to (g) of Section 111 therein (See the decisions of the Hon'ble Supreme Court reported as Firm Sardarilal Vishwanath v Pritam Singh AIR 1978 SC 1518 and V. Dhanapal Chettiar v Yesodai Ammal (1979) 4 SCC 214.".

20 The mandate of section 108 (q) of the TPA also follows; that on the expiry of lease, the lessee is bound to handover possession of the leased premises to the lessor; even otherwise the lessor would be entitled to maintain an action to compel the lessee to abide by this mandate.

21 The question thus posed before this Court and which has to be answered is as to whether in the present case there is an admission by the defendant 'in his pleadings or otherwise' to the effect that the tenancy stood legally terminated.

22 Paras 2 & 3 of the plaint has clearly averred that the last extension of the lease was up to 30.09.1995 and thereafter the tenancy had expired by efflux of time. There is no specific denial to the same in the corresponding paras of the written statement. Evasive denial is also no denial.

23 In 1988 2 DL 470 Delhi National Research Development Corporation of India Vs. Ferrite India Ltd., a Bench of this Court had held that where there was no denial in the written statement of the liability to pay the royalty amount claimed in the plaint, it amounted to an unambiguous admission. Admission in the pleadings must undoubtedly be clear, unambiguous, unconditional and unequivocal entitling the plaintiff to a decree under Order 12

Rule 6 of the Code.

24 In this case the evasive denial of the defendant to the specific averments (as noted above) in the plaint amount to an admission. Tenancy had thus expired by efflux of time on 30.09.1995. No notice under Section 106 of the TPA was required as this was a tenancy which had been terminated under Section 111 (a) of the TPA.

25 Even otherwise, notice 106 of the TPA had been proved as Ex. PW-1/8; it had been sent by registered A.D. and the presumption under Section 27 of the General Clause Act, 1872 also arises in favour of the plaintiff.

26 Learned counsel for the respondent/defendant had lastly urged that he had raised a defence of holding over of the tenancy; attention has been drawn to para 10 of the preliminary objections wherein it was averred that even after 30.09.1995, the rent had been accepted for the two months i.e. for the months of October and November, 1995. On this count, the averments made in para 4 of the application under Order 12 Rule 6 of the Code are also relevant. In this pleading, the plaintiff had categorically averred that the tenant has paid rent only up to 30.09.1995; the corresponding para of reply to this application does not make any denial to this fact.

27 Admission of the defendant to fortify into a decree in favour of the plaintiff can be made either in the 'pleadings or otherwise'. The application under Order 12 Rule 6 of the Code fits into this parameter. There is no denial of the specific averment in this application that the rent had been received by the landlord only up to 30.09.1995; this tantamounts to an admission. The defence of

holding over is thus nothing but frivolous.

28 An application under Order 39 Rule 10 of the Code had also been filed by the plaintiff/landlord in the first appeal court. In para 5 he had stated that some amounts had been paid to the appellant as arrears of rent; in para 5, it had been specifically averred that these amounts had not been acknowledged in order that the tenant does not use this as a defence of holding over. This was a specific averment in this application to which the only reply furnished by the tenant is that this is a matter of record. It is thus clear that the defence of holding over in the preliminary objection of the written statement is nothing but frivolous.

29 The admissions made by the respondent/defendant are clear unequivocal. Relationship of landlord-tenant stood admitted; tenancy was for a fixed period which tenancy stood expired on 30.09.1995 by efflux of time. No separate notice was required to be given; that apart a notice Ex. PW-1/8 was sent by the registered A.D. terminating the tenancy w.e.f. 30.09.1995 which was the last date of the expiry of the tenancy by efflux of time. Last rent was ₹4,100/- per month. Admittedly after 30.09.1995, no rent had been paid or received except under the orders of the Court and that also before the first appellate Court.

29 The impugned judgment has misdirected itself by holding otherwise. Judgment under Order 12 Rule 6 of the Code had to follow. Substantial question of law is answered accordingly. Appeal is allowed. Suit is decreed.

INDERMEET KAUR, J.

MARCH 14, 2011

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