

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

% **RFA NO. 81 OF 2009**

+ Date of Decision: 14th March, 2011

RADHIKA CHOUDHARY Appellant
! Through: Mr. S.K. Rungta, Advocate

Versus

\$ **M/S PAYAL VISIONS PVT. LTD.** Respondent
^ Through: Mr. K. Datta, Mr. Sonam W. Sherpa
& Mr. Diwakar Sinha, Advocates

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

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

JUDGMENT

P.K.BHASIN, J

This appeal is directed against the judgment and decree dated 24.10.2008 passed by the Additional District Judge, Delhi in a suit for possession of suit property and *mesne*

profits which had been filed by the respondent-plaintiff (hereinafter to be referred to as 'the plaintiff') against the appellant-defendant(hereinafter to be referred to as 'the defendant'). In the impugned judgment upon admission the learned Additional District Judge by invoking the provisions of Order XII Rule 6 of the Code of Civil Procedure ('CPC' in short) came to a finding that a case of ejectment was made out against the defendant on the basis of admission of the case of the plaintiff-landlord in the written statement filed by defendant.

2. The material facts of the case are that the plaintiff, claiming to be the landlord/owner of the premises bearing khasra no. 857 min.(1-03) within the revenue estate of village Ghitorni(Mehrauli) (hereinafter, 'the suit property') filed a suit against the defendant for recovery of possession and *mesne profits*. The suit was initially filed in the High Court but later on it came to be transferred to District Court because of enhancement in the pecuniary jurisdiction of the District Courts. The case of the plaintiff-landlord in the plaint is that

the defendant was inducted as a tenant in the suit property alongwith superstructure including servant quarter and garage vide lease agreement dated 10.10.2001 at a monthly rent of Rs.50,000/- for a period of three years. The lease was for residential purposes. According to the further case of the plaintiff the defendant committed breach of some terms of the lease and therefore its tenancy was terminated before the expiration of the lease period vide notice dated 16/03/03 and since the defendant failed to deliver back the possession of the suit property to the plaintiff on the expiry of the notice period its possession w.e.f. 01/05/03 became unauthorised. The plaintiff then filed the suit for possession and *mesne profits* on 06/05/03.

3. The defendant contested the suit on various grounds set out in its written statement filed in the trial Court. It was, *inter-alia*, pleaded that the suit property in fact was vested in Gram Sabha and that fact had been concealed by the plaintiff and since the suit property vested in the Gram Sabha the plaintiff had no right to claim possession of the suit property

from the defendant and also that the alleged notice of termination of tenancy dated 16/03/03 was not in accordance with the mandatory requirements of Section 106 of the Transfer of Property Act.

4. The plaintiff in its replication denied that the suit property vested in the Gram Sabha and pleaded that the defendant in any case was stopped from challenging the title of the plaintiff having admittedly taken on rent the suit property from the plaintiff. It was also pleaded that, in fact, chakbandi was going in the village by the Revenue Department, the whole of the properties are taken over by the Revenue Authorities for the purpose of Chakbandi only and the title of the plaintiff qua the suit property remains to be the same i.e. the plaintiff is owner of the suit property.”

5. The pleadings of the parties had led to the framing of the following issues by the learned Additional District Judge for trial:

1. Whether the plaintiff has no locus standi to file the present Suit?

2. Whether the suit property has been vested with the Gram Sabha, if so, its effect?

3. Whether the Lease Agreement dated 10.10.2001 executed between the plaintiff and the defendant is not valid?

4. Whether the notice of termination of Lease Agreement was not issued as per Provision of Section 106 of Transfer of Property Act?

5. Whether the Plaintiff is entitled to decree of possession of the suit property against the defendant as prayed for in para 1 of the prayer of the Plaint?

6. Relief.

Out of these six issues, issue nos. 1 and 2 were treated as preliminary issues by the learned trial Judge and thereafter the matter was posted for arguments on these two preliminary issues.

6. Before arguments on the preliminary issues could be heard the plaintiff moved an application under Order XII Rule 6 CPC alleging that since the defendant was admitting that it had taken on rent the suit property from the plaintiff and also that the rent was Rs.50,000/- p.m. and it had been served with a notice of termination of its tenancy a decree for possession could be passed straightaway. The defendant opposed that application on the ground that since it was

claiming that the plaintiff could not get a decree of possession on many grounds taken in the written statement no decree could be passed by the trial Court by resorting to Order XII Rule 6 CPC. The learned trial Court came to the conclusion that in view of Section 116 of the Evidence Act the defendant could not challenge the title of the plaintiff having admitted relationship of landlord and tenant with the plaintiff and therefore the plaintiff was entitled to get a decree of possession of the suit property. Holding so, the learned trial Court decreed the suit as far as the relief of possession was concerned.

7. Feeling aggrieved, the defendant has filed this appeal.

8. It was contended by Shri S.K.Rungta, learned counsel or the appellant that the trial Court was not justified at all in decreeing the suit for possession under Order XII Rule 6 CPC since the defendant had raised certain legal points going to the root of the matter and which required to be answered first by the Court but without advertng at all to those pleas despite

the fact that specific issues had been framed in respect of those pleas and even two issues had been treated as preliminary issues a decree for possession was passed without giving any findings even on the preliminary issues. Learned counsel for the appellant also drew my attention to the copy of the appeal filed by the respondent herein against one order dated 17th February, 1999 passed by the Revenue Authority under the Delhi Land Reforms Act whereby it had been ordered that the suit property shall automatically vest in the Gaon Sabha if the appellant (respondent herein) would not reconvert the land in question for agricultural purposes within three months. That appeal came to be dismissed by the Appellate Authority and copy of that order was also placed on record by the appellant herein in the present appeal. Learned counsel for the respondent had not disputed the genuineness of those documents but he maintained his argument that these questions were irrelevant in a suit for possession between a landlord and tenant and in respect of which tenancy the provisions of the Rent Act do not apply.

9. On the other hand Shri Sudhir Nandrajog, learned senior counsel for the respondent–plaintiff contended that no fault could be found with the impugned judgment of the trial Court since very rightly Order XII Rule 6 CPC was pressed into service by the plaintiff to cut short the litigation as far as the relief of possession was concerned. It was also submitted that once the relationship of landlord and tenant and receipt of notice of termination of its tenancy was admitted by the defendant there remained nothing to be adjudicated by the trial Court as far as the relief of possession sought for by the plaintiff was concerned and so the trial Court was fully justified in passing the decree for possession in favour of the plaintiff. As far as the plea of the defendant that the suit was barred under the Provisions of Delhi Land Reforms Act is concerned the same being totally frivolous has been rightly ignored by the trial Court. In support of these submissions learned senior cited before me a bunch of judgments of this Court wherein decrees for possession had been passed in favour of the landlords in view of the admissions made by the

tenants that they had taken the suit premises on lease and that notice of termination of their tenancies had also been received by them and the rent was more than Rs.3500/- p.m. In one of those relied upon judgments a plea similar to the one taken by the defendant in the present case viz. the suit property was governed by the provisions of the Delhi Land Reforms Act was also taken by the tenant but rejecting that plea this Court had passed the decree of possession by invoking Order XII Rule 6 CPC. Those judgments are reported as 2002 (61) DRJ 676, “Jasmer Singh Sarna and Ors Vs. Electronics Trade & Technology Development Corporation Ltd.”; 79 (1999) DLT 750, “Durgeshwari Devi Vs. International Development Research Centre”; 112 (2004) DLT82, “Bhartia Industries Ltd. & Anr.Vs. Rajiv Saluja”; 104 (2003) DLT 151 (DB), “Delhi Jal Board Vs. Surendra P. Malik”; 139 (2007) DLT 61, “Kamla Rani & Ors. Vs. Texmaco Ltd.”; 130 (2006) DLT 667, “Vishal Builders P. Ltd. Vs. DDA & Ors.”; 156 (2009) DLT 129, “Nilima Gupta Vs. Yogesh Saroha & Ors.”; 65 (1997) DLT 533, “Atma Ram Properties Pvt. Ltd. Vs. Air India”; 74 (1998) DLT

476, “Abdul Hamid & Ors. Vs. Charanjit Lal Mehra & Ors.”. Mr. Nandrajog also contended that these were not the only instances where this Court had either itself passed decrees for possession in while trying suits for possession in exercise of its original civil jurisdiction or had confirmed the decrees passed by the subordinate Courts by resorting to the provisions of Order XII Rule 6 CPC but in fact there were many more such like cases decided by this Court where decrees for possession have been passed the moment any defendant admitted the relationship of landlord and tenant with the plaintiff-landlord as also the receipt of notice under Section 106 of the Transfer of Property Act and the rent was more than Rs. 3500/- p.m.

10. There is no doubt that this Court has been passing decrees for possession in suits between landlords and tenants by resorting to Order XII Rule 6 CPC whenever the defendant-tenant admitted relationship of landlord and tenant and the receipt of notice of termination of contractual tenancy and that too even when the validity of the notice was under challenge. This Court has been while considering applications

under Order XII Rule 6 CPC in such like suits considering even the challenge to the validity of the notice of termination of tenancy whenever raised by the tenants. There is also no doubt that this Court in one of the decisions cited by Mr. Nandrajog had even gone into the question of applicability of the provisions of the Delhi Land Reforms Act in a suit between a landlord and tenant. However, in a very recent judgment rendered by the Hon'ble Supreme Court the judgment given by this Court under similar circumstances in favour of a landlord under Order XII Rule 6 CPC has been reversed and that judgment is sufficient to ignore all the judgments of this Court cited by the learned senior counsel for the respondent-plaintiff and to reverse the decree passed in the present case by the learned trial Court by having resort to Order XII Rule 6 CPC. That judgment has been rendered in the case of ***“M/s Jeevan Diesels & Electricals vs M/s Jasbir Singh Chadha (HUF) & anr.”,(2010) 6 SCC 601***. This was also a case the suit for possession of some immovable property filed by a landlord against its tenant was decreed on the basis

of admissions made by the tenant in its written statement to the effect that there was a relationship of landlord and tenant and that it had been served with a notice of termination of its tenancy by the landlord. The tenant had, however, taken the plea that its tenancy had neither expired by efflux of time nor had it been terminated. The Additional District Judge had passed a decree for possession in favour of the landlord and when the tenant challenged that judgment before this Court the same was affirmed. However, the tenant took the matter further to the Hon'ble Supreme Court and succeeded there in getting the trial Court's judgment as well as that of this Court set aside. The relevant portions from the judgment of the Hon'ble Supreme Court are being reproduced below:-

6. Paragraphs 5 and 6 of the plaint on which the respondents-plaintiffs rely are as follows:- "5. That the tenancy has expired by efflux of time but for the precautionary measure, the Plaintiffs vide notice dated July 15, 2006 terminated the tenancy of the Defendant, which was sent via Regd. Ad. & UPC. The aforesaid notice dated July 15, 2006 was duly served upon the defendant. The copy of said notice is annexed herewith as Annexure A-3. The registration receipt, UPC and acknowledgement card are annexed herewith as Annexure A-4 to A-6 respectively.

7. That the defendant, despite, the determination of its tenancy of the said suit property has failed to vacate the suit property and handover the possession thereof to the Plaintiffs’.

8. In the written statement, which was filed by the appellant, paragraphs 5 and 6 of the plaint have been dealt with in paragraphs 5 and 6 of the written statement respectively. Those two paragraphs are set out below:-

"5. That the contents of para 5 of the plaint are a matter of record. It is submitted that tenancy has neither expired by efflux of time nor it has been terminated.

6. That in reply to the contents of para 6 of the plaint, it is submitted that defendant is in possession of the premises. There has been no determination of tenancy.

8. It is clear from a perusal of the aforesaid averments in the written statement that the appellant has disputed (a) the fact of expiry of tenancy by efflux of time; (b) the appellant has also disputed that there has been a determination of tenancy. So far as receipt of notice referred to in paragraph 5 of the plaint is concerned, there has been no denial by the appellant.

9. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

10. It may be noted herein that to the written statement filed by the appellant, the respondents-plaintiffs did not file any rejoinder. They filed an application under Order 12 Rule 6 of the Code of Civil Procedure for passing a judgment on admission. In the said petition in paragraph 4, the respondents-plaintiffs also averred as follows:- "4. That in view of the admission (i) On existence of relationship of landlord and tenant and there after

(ii) service of the termination notice, the only question left for adjudication for the purpose of possession is "whether the termination of the tenancy has been validly terminated?"

11. To that application the appellant had given a reply. In paragraph 2 of the reply it was again denied by the appellant that there was any admission by them about termination or determination of tenancy. In the said reply it has been stated that in the suit issues are still to be framed and the case be tried in accordance with the Civil Procedure Code as there is no admission by the appellant and the respondents-plaintiffs have to prove its case with legally admissible evidence. As such prayer was made to dismiss the application of the respondents-plaintiffs under Order 12 Rule 6.

12. xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

13. *Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. This question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in Karam Kapahi (supra) may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.*

14. In *Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India and others* reported in (2000) 7 SCC 120 the provision of Order 12 Rule 6 came up for consideration before this Court. This Court on a detailed consideration of the provisions of Order 12 Rule 6 made it clear "wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to

succeed" the principle will apply. In the instant case it cannot be said that there is a clear admission of the case of the respondents-plaintiffs about termination of tenancy by the appellant in its written statement or in its reply to the petition of the respondents-plaintiffs under Order 12 Rule 6.

15. It may be noted here that in this case parties have confined their case of admission to their pleading only. The learned counsel for the respondents- plaintiffs fairly stated before this Court that he is not invoking the case of admission 'otherwise than on pleading'. That being the position this Court finds that in the pleadings of the appellant there is no clear admission of the case of respondents-plaintiffs. (emphasis laid)

11. In my view, this judgment of the Hon'ble Supreme Court applies on all fours to the facts of the present case and in fact the present case, in my view, is on a stronger footing inasmuch as the defendant-tenant here had taken some legal pleas also as to the very maintainability of the suit for possession at the instance of the plaintiff and preliminary issues had been framed and the learned trial Court has not even taken any note of those issues while passing the decree for possession in favour of the plaintiff. In my view, this is also not a case, like the one before the Hon'ble Supreme Court in the case of Jeevan Diesels (supra), where the defendant has made a clear

admission of the case of the plaintiff. Therefore, the impugned judgment and decree passed by the learned trial Court under Order XII Rule 6 CPC cannot be sustained.

12. This appeal is accordingly allowed with costs and the judgment and decree passed by the learned Additional District Judge are set aside. The matter is remanded back to the trial Court to proceed in the suit from the stage of arguments on the preliminary issues which stand framed already.

13. The case shall now be taken up before the concerned Additional District Judge on 31st March, 2011 at 2 p.m.

P.K. Bhasin, J

March 14, 2011/pg