

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 31.10.2011

RSA No. 182/2011

Shri Suniti Ranjan Roy Appellant.

Through: Mr. R.K. Dhawan, Adv.
Vs.

Shri Pabitra Kumar Sengupta Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR:

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

KAILASH GAMBHIR, J.

1. By this Regular Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, the appellant seeks to challenge order dated 20.5.2011 passed by the learned appellate

court whereby the first appeal filed by the appellant against the order dated 18.11.2010 was dismissed.

2. The short controversy that has led to the filing of the present appeal is that the defendant had filed a suit for recovery of possession, arrears of rent and mesne profits where he had filed an application under Order XII rule 6 CPC to claim judgment based on the admission made by the appellant which application was allowed by the learned Trial Court vide order dated 18.11.2010. Aggrieved with the same, the appellant filed an appeal under section 96 CPC against the said order which vide judgment and decree dated 20.5.2011 was dismissed and feeling aggrieved with the same, the appellant has preferred the present petition.

3. Assailing the order dated 20.5.2011, learned counsel for the appellant submits that although no unequivocal admission was made by the appellant in the written statement and in the reply filed by him to the application filed by the respondent under Order XII Rule 6 CPC, yet the learned trial court passed a judgment on admission under Order XII Rule 6 CPC in favour of the respondent and against the appellant in respect of the premises in question. Counsel further states that both the courts below have not taken

into consideration the ingredients of Section 116 of the Transfer of Property Act as the appellant became tenant by holding over after the alleged termination of his tenancy as he continued to pay the rent to the respondent, which rent the respondent continued to accept even after filing of the suit. Counsel also submits that the matter before the learned trial court was at the advance stage and even the respondent's evidence was complete on the issues framed by the learned trial court and at that stage after a lapse of about more than 2 years the respondent moved an application under Order XII Rule 6 CPC, which delay on the part of the respondent would clearly show that the respondent himself was convinced that he was not entitled to any such decree under Order XII Rule 6 CPC. Counsel also submits that the learned trial court has not even directed deletion of issue no.1 and issue no.4 which again would show that the court was still of the view that the said issues required adjudication.

4. I have heard learned counsel for the appellant at a considerable length.

5. In the suit filed by the respondent/plaintiff for recovery of possession, arrears of rent, mesne profits against the

appellant/respondent inter alia on the allegations that the appellant was inducted as a tenant in respect of the demised premises on the first floor of the property bearing no. F-1132, Chittaranjan Park, New Delhi, in the month of November 1993 at the rent of Rs.2600/- p.m. and thereafter the said rent of Rs.2600/- was revised from time to time and lastly it was revised to Rs.4,000/- p.m. w.e.f. 1.8.2002 when a fresh agreement between the parties was executed on 31.7.2002 for a period of eleven months. A legal notice for terminating the tenancy was served upon the appellant by the respondent vide legal notice dated 26.12.2002 and instead of vacating the tenanted premises or paying the arrears of rent, the appellant had preferred a suit for permanent injunction against the respondent with the prayer that he should not be dispossessed from the tenanted premises without due process of law. In the said suit, directions were issued by the court to the appellant to pay the arrears of the rent @Rs.4,000/- p.m. and also to continue paying the said rent to the respondent but the appellant failed to comply with the said directions, which default on the part of the appellant led to the filing of a contempt petition by the respondent before this court. The said contempt petition filed by the respondent was disposed of by this court vide

order dated 3.5.2006. Consequently, on the appellant making the payment of the entire arrears of the rent amount to the respondent and on his undertaking to pay the rent regularly month by month, the said civil suit filed by the respondent was ultimately disposed of by the learned civil court vide order dated 26.10.2006 as compromised between the parties based on the statement of the respondent that he will not be evicting the appellant without due process of law. Thereafter, a fresh termination notice dated 4.12.2006 was sent by the respondent under Section 106 of the Transfer of the Property Act thereby terminating the tenancy of the appellant. Based on the said termination notice, the respondent had filed a suit for recovery of possession and mesne profits against the appellant. The pleadings in the said suit were complete and based on the pleadings of the parties, the learned trial court had also framed the issues. After framing of the said issues, the parties were directed to lead their respective evidence and in fact the respondent had also completed his evidence and it at that stage the respondent had moved an application under Order XII Rule 6 CPC to claim an order under the said provision based on the admissions made by the appellant in the written statement. The

said application of the respondent was allowed by the learned trial court vide order dated 18.10.2010 and the said order was also upheld by the appellate court vide impugned order dated 20.5.2011. Feeling aggrieved with the said orders the appellant has preferred the present Regular Second Appeal.

6. For claiming decree of possession, following three aspects are required to be examined:

1. *Whether there is a relationship of landlord and tenant between the parties.*

2. *Whether the rent of premises is more than Rs.3,500/- per month.*

3. *Whether the tenancy of the tenant has expired either by efflux of time or the same is determined by a legal and valid notice in terms of the Section 106 of the Transfer of the Property Act.*

7. There cannot be any divergent view on the point that a decree under Order XII Rule 6 CPC can be passed only when there is an unambiguous and unequivocal admission on the part of the respondent with regard to the above three aspects either in the pleadings or otherwise. There also can arise no doubt that such a decree can be passed by the learned trial court at any stage of the suit either on the application made by the parties or even by the

court on its own motion. For better appreciation the said provision is reproduced as under:

“ORDER XII: ADMISSIONS

6. Judgment on admissions

(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”

The aim of the said rule is to get a speedy judgment and save the parties from the rigmarole of protracted litigation. Discussing the scope and ambit of the said provision, the Hon’ble Supreme Court in ***Karam Kapahi vs. Lal Chand Public Charitable Trust*** **(2010)4SCC753** held as under:

*"46. The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about 'which there is no controversy' [See the dictum of Lord Jessel, the Master of Rolls, in ***Thorp v. Holdsworth*** in (1876) 3 CD 637 at 640]. In this connection, it may be noted that order 12 Rule 6 was amended by the Amendment Act of 1976.*

47. Prior to amendment the Rule read thus:

6. Judgment on admissions. - Any party may, at any stage of a suit, where admissions of facts have been made, either on

pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment, as the Court may think just.

48. In the 54th Law Commission Report, an amendment was suggested to enable the Court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering judges to use it 'ex debito justitiae', a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment.

.....
50. Keeping the width of this provision in mind this Court held that under this rule admissions can be inferred from facts and circumstances of the case [See Charanjit Lal Mehra and Ors. v. Kamal Saroj Mahajan (Smt.) and Anr. : (2005) 11 SCC 279 at page 285 (para 8)].

*54. In **Uttam Singh** (supra) this Court made a distinction between a suit just between the parties and a suit relating to Specific Relief Act where a declaration of status is given which not only binds the parties but also binds generations. The Court held such a declaration may be given merely on admission (para 16, page 128 of the report)."*

As would be seen from the above observations of the Hon'ble Apex Court, the object of the said rule is to enable a party to obtain speedy judgment at least to the extent of the relief on which there is a clear and unequivocal admission on the part of the defendant and on such admitted facts, the learned trial court may not enter the trial. It is further a settled legal position that merely because the trial court has framed the issues, the same would not be a

ground for rejecting or not entertaining the application moved by the plaintiff under Order XII Rule 6 CPC.

8. In the facts of the case at hand, the appellant has not disputed the fact that before the courts below and even before this court, there was any dispute raised by him with regard to the rate of rent, relationship of landlord and tenant and even termination of his tenancy. However, the contention of the counsel is that the appellant became a tenant by holding over. For better appreciation of this contention it would be useful here to refer to section 116 of TPA as under:

“116. Effect of holding over

If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which the property is leased, as specified in section 106.”

The plea thus raised by the counsel is that the respondent has accepted the rent from the appellant after the determination of the lease and he thus became a tenant by holding over. There is a

consensus on the settled legal position that the mere acceptance of rent by the landlord will not lead to an inference of renewal of the lease by the landlord. The assent of the landlord also cannot be inferred from the acceptance of rent. It would be useful here to refer to the judgment of the Apex Court in the case of **C. Albert Morris vs. K. Chandrashekar** (2006)1SCC 228 wherein after analyzing the judicial pronouncements on the issue it was held as under:

*"Much argument was advanced on the receipt of the rent by the landlord after the cancellation of the lease. The consensus of judicial opinion in this country is that a mere continuance in occupation of the demised premises after the expiry of the lease, notwithstanding the receipt of an amount by the quondam landlord would not create a tenancy so as to confer on the erstwhile tenant the status of tenant or a right to be in possession. In this context, we may refer to judgment of this Court in **Raptakos Brett & Co. Ltd. v. MANU/SC/0595/1998 : Ganesh Property**, AIR1998SC3085 . In paragraph 13 of the said judgment, this Court held as under:*

"In view of the aforesaid settled legal position, it must be held that on the expiry of the period of lease, the erstwhile lessee continues in possession because of the law of the land, namely that the original landlord cannot physically throw out such an erstwhile tenant by force. He must get his claim for possession adjudicated by a competent Court as per the relevant provisions of law. The status of an erstwhile tenant has to be treated as a tenant at sufferance akin to a trespasser having no independent right to continue in possession."

14. The following judgments may also be beneficially looked into in support of the above submission:

*The judgment in **Saleh Bros. v. K. Rajendran and Anr.**, (supra) which deals with the receipt of rent subsequent to the notice determining lease and pending adjudication suit and as to whether*

receipt of rent by itself amounts to waiver. In paragraphs 12, 19, 20 & 31, this Court held as under:

"Para 12 - The receipt of rent may only create a presumption and cannot by its own force amount to a waiver. Section [113](#) consists of two limbs: (a) the express or implied consent of the person to whom notice is given and (b) "the act of the person giving the notice showing the intention to treat the lease as subsisting". In order to constitute a waiver, both the limbs must concurrently operate, which means, that an act by itself and of its own force, without reference to the intention of the parties, cannot bring about a waiver. So much is quite clear from the plain language of the section, which embodies the basic principles, and I find no justification for reading the Illustrations as being repugnant to the section. Every effort should be made to interpret the Illustration in conformity with the main section. The principle underlying Section [116](#) of the Act will also apply in applying Section [113](#) as this is also a case of continuance of the lease restoring the old tenancy.

Para 19 - I shall next refer to another recent decision of the Supreme Court, in : [1968]2SCR20 . In that decision, too, the Supreme Court pointed out that under Section [113](#) of the Transfer of Property Act the act which operates as a waiver must show an intention to treat the lease as subsisting and other party's consent, express or implied therefore. In that case the tenants, who were holding over, issued, on 12th August, 1953, a notice to the landlord of their intention to vacate the premises on 31st August, 1953. But by their letter, dated 26th August they withdrew that notice. The landlord did not agree to the withdrawal of the notice and insisted that the lease had been determined under Section [111\(h\)](#) of the Transfer of Property Act. Dealing with the question of waiver, the Supreme Court observed as follows:-

"Clearly Section [113](#) contemplates waiver of the notice by any act on the part of the person giving it, if such an act shows an intention to treat the lease as subsisting and the other party gives his consent... express or implied therefore. The law under the Transfer of Property Act on the question in hand is not different from the law in England. Once a notice is served determining the tenancy or showing an intention to quit on the expiry of the period of the notice, the tenancy is at an end, unless with the consent of the other party to whom the notice is given the tenancy is agreed to be treated as subsisting."

Para 20 - "The question therefore is, quo animo the rent was received, and what the real intention of both parties was?"

Para 31 - The decision in Kai Khurshroo v. [Bai Jerbai](#), turned upon the peculiar facts of that case and there was a difference of opinion, Patanjali Sastri, J., as he then was, taking a different view. There, after notice to quit, defendants 2 and 3 who claimed to be sub-

tenants insisted upon continuing in possession and paid the rent month after month. The majority took the view that the landlord had obvious motive in receiving the payments of rent after a particular period i.e. the appointment of a receiver of the property of the mortgagor at the instance of his mortgagee. Having regard to the uniform view taken in all the decisions, both Indian and English, I am not inclined to interpret this decision of the Federal Court as an authority for the position that the payments and receipt of rent as such in every circumstance would amount to waiver, whatever may be the circumstances of the case and the intention of the lessor".

In the case of **Bhawanji Lakhamshi and Ors. v. Himatlal Jamnadas Dani and Ors.** (supra), this Court observed as under:

"The act of holding over after the expiration of the term does not create a tenancy of any kind. If a tenant remains in possession after the determination of the lease, the common law rule is that he is a tenant on sufferance. A distinction should be drawn between a tenant continuing in possession after the determination of the term with the consent of the landlord and a tenant doing so without his consent. The former is a tenant at sufferance in English Law and the latter a tenant holding over or a tenant at will. In view of the concluding words of section 116 of the Transfer of Property Act, a lessee holding over is in a better position than a tenant at will. The assent of the landlord to the continuance of possession after the determination of the tenancy will create a new tenancy. What the section contemplates is that on one side there should be an offer of taking a new lease evidenced by the lessee or sub-lessee remaining in possession of the property after his term was over and on the other side there must be a definite consent to the continuance of possession by the landlord expressed by acceptance of rent or otherwise. In *Kai Khushroo Bezonjee Capadia v. Bai Jerbai Hirjibhoy Warden* and another the Federal Court had occasion to consider the question of the nature of the tenancy created under Section 116 of the Transfer of Property Act and Mukherjea J. speaking for the majority said, that the tenancy which is created by the "holding over" of a lessee or under-lessee is a new tenancy in law even though many of the terms of the old lease might be continued in it, by implication; and that to bring a new tenancy into existence, there must be a bilateral act. It was further held that the assent of the landlord which is founded on acceptance of rent must be acceptance of rent as such and in clear recognition of the tenancy right asserted by the person who pays it. Patanjali Sastri J., in his dissenting judgment, has substantially agreed with the majority as regards the nature of the tenancy created by section 116 of the Transfer of Property Act, and that is evident from the following observations:-

"Turning now to the main point, it will be seen that the section postulates the lessee remaining in possession after the determination of the lease which is conduct indicative, in ordinary circumstances of his desire to continue as a tenant under the lessor and implies a tacit

offer to take a new tenancy from the expiration of the old on the same terms so far as they are applicable to the new situation, and when the lessor assents to the lessee so continuing in possession, he tacitly accepts the latter's offer and a fresh tenancy results by the implied agreement of the parties. When, further, the lessee in that situation tenders rent and the lessor accepts it, their conduct raises more readily and clearly the implication of an agreement between the parties to create a fresh tenancy."

*In the case of **R.V. Bhupal Prasad v. MANU/SC/0035/1996 : State of A.P. and Ors.**, AIR1996SC140, in paragraphs 8 & 9 this Court observed as under:*

"Para 8 - Tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of a lawful title. There is little difference between him and a trespasser. In Mulla's Transfer of Property Act (7th Edn.) page 633, the position of tenancy at sufferance has been stated thus: A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It, therefore, cannot be created by contract and arises only by implication of law when a person who has been in possession under a lawful title continues in possession after that title has been determined, without the consent of the person entitled. A tenancy at sufferance does not create the relationship of landlord and tenant. At page 769, it is stated regarding the right of a tenant holding over thus: The act of holding over after the expiration of the term does not necessarily create a tenancy of any kind. If the lessee remaining in possession after the determination of the term, the common law rule is that he is a tenant on sufferance. The expression "holding over" is used in the sense of retaining possession. A distinction should be drawn between a tenant continuing in possession after the determination of the lease, without the consent of the landlord and a tenant doing so with the landlord's consent. The former is called a tenant by sufferance in the language of the English law and the latter class of tenants is called a tenant holding over or a tenant at will. The lessee holding over with the consent of the lessor is in a better position than a mere tenant at will. The tenancy on sufferance is converted into a tenancy at will by the assent of the landlord, but the relationship of the landlord and tenant is not established until the rent was paid and accepted. The assent of the landlord to the continuance of the tenancy after the determination of the tenancy would create a new tenancy. The possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy, his possession is juridical.

Thus it would be clear from the law enunciated herein above that the in facts of the present case, the appellant cannot be a tenant by holding over and the mere acceptance of rent cannot be taken to be the creation of a new tenancy or revival of the old and cannot in any manner be viewed as the assent given by the landlord. It also cannot be lost sight of the fact that the respondent had already filed a suit against the plaintiff and the acceptance of the rent thereafter in no manner can be called to be with a view to revive the relationship of tenant and landlord as the respondent had already set in motion the legal machinery for getting back the possession of the demised premises. Another plea raised by the appellant, that the possession sought by the respondent was not of the entire tenanted premises is equally fallacious as the appellant failed to disclose as which part of the tenanted premises was left out by the respondent in his suit for possession.

9. It would be thus seen that the appellant has unequivocally admitted that there was a relationship of landlord and tenant between the parties; the rent of the premises was Rs.4000/- per month and termination of his tenancy under Section 106 TPA, thus this court does not find any illegality in the orders passed by both the courts below. The appellant has failed to

satisfy this court as to how and in what manner the appellant has raised any dispute to controvert the said three basic facts to deny a decree of possession to the respondent based on the admission as envisaged under Order XII Rule 6 CPC.

10. In the light of the above, there is no merit in the present appeal and the same is accordingly dismissed at the preliminary stage.

OCTOBER 31, 2011
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KAILASH GAMBHIR,J