

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

+ RSA No. 200/2011

Judgment delivered on: 22 November, 2011

Anil Kumar Sharma Appellant

Through Mr. Virendra Singh, Adv.

versus

Kailash Chand Kochhar Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR:

KAILASH GAMBHIR, J. (Oral):

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1. By this second appeal filed under Section 100 of the Code of Civil Procedure, 1908 the appellant seeks to challenge the order dated 4.11.2011 passed by the learned first appellate court and judgment and decree dated 9.8.2011 passed by the learned trial court in favour of the respondent.

2. The short controversy that has led to the filing of the present appeal is that the respondent had filed a suit for possession, recovery of rent and damages against the appellant in respect of the property bearing no A-20, South Extension,

Part-I, New Delhi-110049 wherein he had filed an application under Order XII rule 6 CPC to claim judgment based on the admissions made by the appellant which application was allowed by the learned Trial Court vide order dated 9.8.2011. Aggrieved with the same, the appellant filed an appeal under section 96 CPC against the said order which vide judgment and decree dated 4.11.2011 was dismissed and feeling aggrieved with the same, the appellant has preferred the present appeal.

3. Challenging the orders of both the courts below, Mr. Jha, learned counsel for the appellant submits that the appellant had disputed the termination of his tenancy as no valid legal notice terminating the tenancy of the appellant was admitted by the appellant either in his written statement or in the reply filed by him to the application filed by the respondent under Order 12 Rule 6 CPC. Counsel submits that in fact the respondent through his eviction notice himself duly acknowledged the fact of the extension of lease in favour of the appellant which fact in the said notice supports the defence of the appellant pleading extension of his lease for a period of five years. In support of his arguments, counsel has placed

reliance on the judgment of the Apex Court in the case of *Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha & Anr. (2010) 6 SCC 601*. Counsel further contends that so far extension of the lease is concerned, the Hon'ble Supreme Court has clearly taken a view that the extension of the lease does not require any execution or registration, if such an extension is for a period of one year or more. In support of his arguments, counsel has placed reliance on the judgment of the Apex Court in *Hardesh Ores Pvt. Ltd. Vs. M/s. Hede & Company*, JT 2007(7) SC 150.

4. I have heard learned counsel for the appellant at considerable length and given my careful consideration to the arguments advanced by him.

5. 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.

6. 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.

7. In the facts of the case at hand the relationship of the landlord and the tenant is not in dispute. It is also not in dispute that the rent of the premises is more than Rs.3,500/- p.m. The only dispute raised by the appellant in the present second appeal is that the tenancy was not validly terminated in terms of Section 106 of the Transfer of the Property Act. It is an admitted case between the parties that the agreement

dated 26.5.2006 was executed between the parties and the lease in favour of the appellant was for a period of eleven months commencing from 10.11.2005 and the said eleven months period came to an end on 9.10.2006. Two legal notices were sent by the respondent i.e. 31.8.2009 and 30.9.2009. Through legal notice dated 30.9.2009, the tenancy of the appellant was terminated w.e.f. 10.10.2009, by which time also he was required to hand over the peaceful and vacant possession of the tenanted premises. On a perusal of the impugned judgment passed by the learned trial court, it is manifest that during the admission/denial of documents, the appellant had admitted the receipt of said notices, although he had denied the contents of the said notices. The validity of the said termination notice was challenged by the appellant in the first appeal on the ground that the tenancy of the appellant was not terminated by 15 days notice, and therefore, the said notice dated 30.9.2009 was not in conformity with the mandate of Section 106 of the Transfer of the Property Act. This issue has been discussed much in detail by the learned trial court as well as by the learned appellate court and this court does

not find any illegality or perversity in the reasoning given by both the courts below. The learned appellate court in para 24 of the impugned order has correctly held that the technical defences with respect to notices should not be permitted as long as 15 days period had expired prior to the filing of the suit. It is not in dispute that the suit for possession was filed by the respondent after expiry of 15 days period and therefore it cannot be held that 15 days time was not given to the appellant before filing of the suit of possession by the respondent. This court, therefore, does not find any merit in the arguments canvassed by the counsel for the appellant, challenging the validity of the legal notice.

8. Coming to the second argument of the counsel for the appellant that the lease was extended for a period of five years, this argument is also devoid of any force as admittedly no lease deed in writing was executed between the parties after execution of the first lease deed which was for a period of eleven months. Both the learned courts below rightly held that in terms of Section 107 of the Transfer of the Property Act, lease for a period of one year or more is compulsorily

registerable and therefore, there could not have been any extension of lease for a period of five years as claimed by the appellant and on the expiry of the period of lease, the appellant became tenant month by month and his monthly tenancy was validly terminated by the respondent through legal notice dated 30.9.2009.

9. In the light of the above, this court therefore, does not find any merit in the present second appeal as no substantial question of law has been raised by the appellant for the decision of this court.

10. There is no merit in the present second appeal, the same is dismissed accordingly.

November 22, 2011
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KAILASH GAMBHIR,J