

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

+ C.M.(M) 514/2012

Date of Decision: 27.09.2012

RAGHUBIR SARAN CHARITABLE TRUST Petitioner

Through: Mr. Sandeep Sethi, Sr. Adv.
with Mr. S.P. Mehta, Mr.
Simran Mehta & Ms. Yogita
Sunaria, Advs.

Versus

ARUN KUMAR JAIN & ANR Respondents

Through: Mr. Ramraghvendra, Adv.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J. (Oral)

1. This is a petition under Article 227 of the Constitution of India assailing the order dated 30.03.2012, passed by the A.D.J. (Central-03) Delhi, whereby the Petitioner/landlord's application under Order 12 Rule 6 of the C.P.C, was dismissed.

2. The petitioner is a trust by the name of Raghubir Saran Charitable Trust. The brief facts of the case are, the petitioner let out the premises bearing No. E-9 located in the inner circle of Connaught Place, New Delhi (hereinafter referred to as "the suit premises") in

1984 to the respondents at a monthly rental of Rs. 585.50. This lease amount increased subsequently and in 2000, it became Rs. 3660.50 per month. On 07.06.200, the petitioner issued a notice to the respondents terminating their tenancy and requiring them to hand over possession of the suit premises. Due to non compliance of the notice, the petitioner filed a suit for possession and mesne profits initially in the High Court on 31.07.2000, which was subsequently transferred to the District Court on 04.11.2003, as the pecuniary jurisdiction had changed. The petitioner filed application under Order 12 Rule 6 CPC to seek decree alleging that the written statement filed by the respondents contained unambiguous and unequivocal admissions as to the; a) existence of a landlord tenant relationship; b) rate of rent being higher than Rs. 3500/- per month; c) receipt of a notice terminating the tenancy. The Addl. District Judge passed an order on 11.05.2004, decreeing the petitioner's suit for possession. An RFA was moved by the respondents, wherein this Court set aside the order of the Addl. District Judge, observing certain factual inaccuracies in the aid judgment and remanded the case back for de-novo consideration, giving the petitioner liberty to file a fresh application under Order 112 Rule 6 CPC in the Trial Court. Accordingly, a fresh application under Order 12 Rule 6 of the CPC was filed on 25.01.2008, praying for decree of possession. The application was dismissed by the Ld. A.D.J. on 30.03.2012. This order is under challenge in the present petition.

3. The petitioner has based arguments on the ground that in the written statement filed by the respondents, there had been an unambiguous and unequivocal admission as noted above and this entitles the landlord to a decree of possession under Order 12 Rule 6 of the C.P.C.

4. The respondents' plea was that the parties have allegedly entered into an agreement to sell the suit premises. They stated that the petitioner trust had agreed to sell the premises in question to the respondent and in that regard, accepted an amount of Rs. 5 Lacs vide cheque No. 615480 dated 08.05.2000 drawn on Citi Bank as earnest money. In addition, the respondents also state that the agreement to sell was confirmed by the broker M/s Bagolia Associates Pvt. Ltd vide letter dated 04.05.2000. In addition, the respondents withdrew a sum of Rs 20 lacs from the bank on 12.05.2001 and gave a sum of Rs. 10 lacs to the petitioner by way of part payment and had kept the remaining 10 lacs as the petitioner had not completed the necessary documents. Reference was also made to a letter dated 04.05.2000 sent by M/s Bagolia Associates, intimating that One Mr. Harsh Aggarwal, trustee had agreed to sell the property. The respondents contended that in view of this letter, the notice of termination of tenancy dated 07.06.2000 was illegal. Admittedly, the respondents have filed a suit for specific performance bearing no 666/03, which is pending in this Court. Also, they submitted that the written statement should be read as a whole and

not only a part of it. Thus, the respondents submit that all these issues are triable and need to be examined by producing evidence.

5. The petitioner has not denied the receipt of the cheque of Rs. 5 lacs, but they contend that due to the increase in the market rent (which was more than Rs. 5 Lacs), the said amount was paid as a deposit till the actual amount of market rent of the suit property was negotiated and finalized between the parties. They also stated that it was informed to the respondents time and again that since the rent is now over Rs. 3500/-, it was no longer covered by the Delhi Rent Control Act and therefore, the petitioner was fully entitled to terminate the monthly tenancy and recover possession under the Transfer of Property Act.

6. The Ld. ADJ dismissed the application vide order dated 30.03.2012 stating that the ground raised by the respondents are indeed those of a triable nature and they need to be examined based on evidence. The Ld ADJ dismissed the submission of the petitioner regarding the acceptance of the cheque of Rs. 5 lacs stating that it did not appeal to reason that the tenant would agree to an increase in the rent from Rs. 3660.50 to Rs. 5 lacs a month, which was almost around 150 times the original rent. In the order, parts of the letter dated 04.05.2000 written by M/s Bagolia Associates Pvt. Ltd was referred to and they read as under:-

“This has in reference of our joint meeting with Mr. Harsh Aggarwal, trustee Sh. Raghubir Saran Charitable Trust at 42, Janpath, New Delhi today. In the joint meeting, the trust has

agreed to sale and you and/or your nominee has agreed to purchase the above said property on ownership basis from the trust. You have handed over a cheque of Rs. 5 lacs against the same to the trust. The entire agreed consideration has to be paid at the time of execution of the sale deed. Our brokerage would be Rs. 5 lacs (Rupees Five Lacs only) as agreed.”

7. It is important to keep in mind that the power of this Court under Article 227 of the Constitution of India is not in the nature of appellate jurisdiction and so the extent and scope of power with this Court is limited. In view of this aspect, I have examined the records and arguments of the parties.

8. The Ld. ADJ dismissed the application, and rightly so, on the ground that the respondents have raised triable issue. It is true that, in the written statement filed by the respondents, there has been an unambiguous and unequivocal admission of the relationship of landlord tenant, the rent being in excess of Rs. 3500/- and receipt of the notice of termination of tenancy. Be that as it may, the respondents have raised the issue that there was an agreement to sell the suit premises between the petitioner and the respondents. It is important that the written statement should be read as a whole. In **“Syed Dastagir vs. T.R Gopalakrishnasetty, AIR1999SC3029”**, the Hon’ble Supreme Court has held that:-

“9..... In construing a plea in any pleading, Courts must keep in mind that a plea is not an expression of art and science but an expression through words to place fact and law of one's case for a relief. Such an expression

may be pointed, precise, sometimes vague but still could be gathered what he wants to convey through only by reading the whole pleading, depends on the person drafting a plea. In India most of the pleas are drafted by counsels hence aforesaid difference of pleas which inevitably differ from one to other. Thus, to gather true spirit behind a plea it should be read as a whole.”

9. Further, the power of the court under Order 12 Rule 6 is discretionary. The provisions of Order 12 Rule 6 (1) amended by the 54th Law Commission Report reads as follows:-

“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.”

Prior to the amendment the Rule read as under:-

“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.”

The Supreme Court in the case of “***Karam Kapahi and Ors Vs Lal Chand Public Charitable Trust and Anr, (2010)4SCC753***” explained the reason for this amendment stating that:-

“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.”

Thus, it is clear that the Court can exercise its discretion while deciding an application under Order 12 Rule 6. It is not mandatory for the court to pass a judgment against a party based on the alleged admissions.

10. In light of the above discussion, it is clear that the respondents should be given an opportunity to prove their case, since they have raised a triable issue. I do not see any infirmity or illegality in the impugned order. The petition is hereby dismissed.

M.L. MEHTA, J.

SEPTEMBER 27, 2012

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