

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

Date of decision: 11th September, 2013.

+ **RFA 119/2013**

MANORANJANA SHARMA **Appellant**
Through: Mr. Anand Prakash, Adv.

Versus

NARESH KUMAR MANSHANI **Respondent**
Through: Mr. K.K. Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This appeal impugns the judgment (dated 29.11.2012 of the Court of Additional District Judge-04, South District, New Delhi in CS No.175/2011 filed by the respondent) on admissions of ejectment of the appellant from the premises earlier in her tenancy.

2. Notice of the appeal was issued. The counsels were heard on 27.08.2013. However upon the counsel for the appellant contending that the appellant in her written statement had disputed the service of notice dated 01.06.2011 of determination of tenancy and having sent a reply dated 06.06.2011 thereto and realizing that the Trial Court record had not been requisitioned, the appeal was admitted for hearing and the Trial Court

record requisitioned. The appellant thereafter filed CM No.13653/2013 impugning the decree for recovery of possession / ejectment against the appellant which had since been drawn up by the Trial Court. The counsels were heard further on 10.09.2013, on which date while the contention of the counsel for the respondent was that the appellant in her written statement had admitted giving of the reply dated 06.06.2011 to the notice dated 01.06.2011, the contention of the counsel for the appellant was that there was no such admission. Finding the said reply dated 06.06.2011 to have been of an advocate on behalf of the appellant, it was enquired from the counsel for the appellant whether the appellant had engaged the said advocate. Upon the counsel for the appellant expressing ignorance, the personal presence of the appellant for today was directed. The appellant has appeared and the counsel under instructions from her states that the reply dated 06.06.2011 was indeed got sent by the appellant to the legal notice dated 01.06.2011 of determination of tenancy. The appellant tenders unconditional apology for wrongfully instructing the counsel that she had not sent any such reply. Considering that the appellant is a lady and in view of the remorse expressed by her, it is not deemed proper to take any further action against the appellant for indulging in falsehood, though the appellant

is cautioned to be careful in future.

3. The further contention of the counsel for the appellant is that there was no admission in the written statement of the appellant / defendant for judgment for recovery of possession / ejectment being passed without any trial.

4. However, the said argument loses sight of the fact, and the counsel for the appellant during the hearing also admitted, that there is no dispute, (i) that the period for which the premises were let out to the appellant has expired; (ii) that the last paid rent was at the rate of Rs.8,000/- per month, taking the premises outside the purview of Delhi Rent Control Act, 1958 and the protection from eviction provided to the tenant thereunder; and (iii) that the rent was so being paid to the respondent and the appellant was a tenant under the respondent.

5. The service of notice of determination of tenancy also now stands admitted. Even otherwise the Supreme Court in *Nopany Investment (P) Ltd. Vs. Santokh Singh (HUF)* (2008) 2 SCC 728 followed by the Division Bench of this Court in *Sri Ram Pistons & Rings Ltd. Vs. C.B. Agarwal HUF* MANU/DE/2381/2008 has held that service of summons of a suit for

ejectment in itself amounts to determination of tenancy.

6. It would thus be seen that all the ingredients necessary for passing a judgment / decree for ejectment were not controverted and there was nothing which required trial for the relief claimed of ejectment. Order XV of CPC mandates the Court to pronounce judgment forthwith where the parties are not at issue on any question of law or fact.

7. The counsel for the appellant also has not stressed on the aforesaid aspect but has contended that, in the judgment / order dated 29.11.2012, against which this appeal has been preferred, there was no direction for preparation of decree and the appellant was given two months time to vacate the premises; that the appeal, which could have been filed against the decree only, was also filed without the decree being in existence; when the respondent applied for execution to the Trial Court, it was realized that there was no decree and a decree was then prepared in the date of 18.02.2013 when the judgment in pursuance to which the decree was to be prepared was of 29.11.2012; that Order 20 Rules 6 & 7 require the decree to be of the same date as the judgment and that it is not so in the present case; that the decree gives two months time from the date thereof i.e. 18.02.2013 to the appellant to vacate the premises. He has thus contended that there is an

error and though he has taken these objections before the Executing Court but he would rather have these adjudicated in this appeal rather than before the Executing Court.

8. The counsel for the appellant, upon being asked as to how the appellant is prejudiced from the aforesaid illegality in procedure in preparation of the decree, is unable to give any answer.

9. The CPC has been amended with effect from the year 2002 to provide for an appeal against the judgment alone, without the decree being required to be filed along with memorandum of appeal.

10. The Supreme Court in *Dr. Chiranji Lal Vs. Hari Das* (2005) 10 SCC 746 referring to Order 20 Rule 6A of the CPC reiterated the view earlier taken in *West Bengal Essential Commodities Supply Corporation Vs. Swadesh Agro Farming and Storage Pvt. Ltd.* (1999) 8 SCC 315 that as long as the decree is not drawn up the last paragraph of the judgment shall be deemed to be a decree and the party interested in executing the decree before it is drawn up can apply for execution of the last paragraph of the judgment.

11. Of course, Rule 6A (supra) of Order 20 of the CPC has been amended

with effect from 1st July, 2002 and which amendment though was not noticed in ***Dr. Chiranji Lal*** (supra) but in my view the amendment does not affect what was laid down as aforesaid by the Supreme Court inasmuch as though the amended Rule 6A does not contain the express provision as earlier contained that so long as the decree is not drawn up, the last paragraph of the judgment shall be deemed to be the decree for the purpose of execution, but still provides that as soon as the decree is drawn, the judgment shall cease to have the effect of a decree for the purposes of execution or for any other purpose and which implies that till the decree is drawn up, the judgment shall have the effect of a decree for the purposes of execution also. The objects and reasons for the amendment with effect from 1st July, 2002 of Rule 6A of Order 20 of CPC also do not indicate that the purpose of amendment was to take away the effect of the judgment as a decree till the drawing up of the decree.

12. Though the counsel for the appellant is correct in his contention that the judgment and decree are to bear the same date and that there is a violation of the said Rule by the Trial Court but it is also a settled principle of law that a mistake of the Court would not prejudice any person. Neither can the appellant derive any benefit nor can the respondent be made to

suffer any prejudice owing to the said mistake which is clearly of the Court and for rectification of which an application under Section 152 of the CPC is stated to have already been filed. The counsel for the appellant further states that the said application has been filed before the Executing Court and not in the Suit Court. He however admits that the Suit Court and the Executing Court is the same i.e. the Court of Additional District Judge-04, South District, New Delhi.

13. Though there is merit in the contention of the counsel for the appellant that the application u/S 152 CPC should have been filed in the suit proceeding and not in the execution proceeding but the appellant having now chosen to have the said conflict resolved in this appeal, by this Court, the said objection also disappears. The error in preparing the decree of a date other than the date the judgment bears is ordered to be corrected and the necessary correction be made by the Court of Additional District Judge-04, South District, New Delhi in this regard in the record.

14. I reiterate that the aforesaid cannot be grounds for challenging the order / judgment of ejectment on admissions and qua which no fault is urged.

15. The appeal is therefore dismissed but with the direction aforesaid for correction of date of the decree.

16. In the entirety of the facts, no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 11, 2013

‘gsr’