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

+ RFA 184/2012

% Judgment reserved on 24th January, 2013
Judgement delivered on 6th February, 2013.

EARTHTECH ENTERPRISES LTD. Appellant

Through: Mr. Anil Ghera and
Ms. Parvinder Khatra, Advs.

Versus

KULJIT SINGH BUTALIA Respondent

Through: Mr. Daljit Singh, Sr. Adv.
with Mr. Saurabh Shandilya, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J.

1. Vide judgment and decree dated 21st March, 2012 trial court has passed a decree of possession against the appellant-defendant, on an application under Order 12 Rule 6 of the Code of Civil Procedure, 1908 (for short, hereinafter referred to as “the Code”), which is under challenge in this appeal.

2. Case of the respondent, as emerges from the records, is that respondent was owner of property bearing no. 39, Sadhna Enclave, New Delhi. He leased out second floor of the said property

(hereinafter referred to as the “suit property”) to appellant, a company registered under the Companies Act, 1956 with effect from 1st October, 2002 on a monthly rent of ₹20,000/-. Subsequently, rent was increased to ₹30,000/- with effect from 1st April, 2003 pursuant to a fresh lease deed. Thereafter, rent was again increased to ₹35,000/- with effect from 31st October, 2006. Since the lease agreements were unregistered, tenancy was on month to month basis commencing from 1st day of each calendar month and ending on the last day of same month. Shri O.P. Aggarwal was controlling the appellant-company through dummy directors and it is he who was living in the suit property. Shri O.P. Aggarwal and appellant engaged themselves in fraudulent deals wherein huge amounts belonging to National Agricultural Cooperative Marketing Federation of India Ltd. (NAFED) were used for importing petroleum products instead of utilising the same for agricultural purposes. Several criminal and civil proceedings were initiated against them. Respondent asked the appellant to vacate the suit property but to no avail. On 7th August, 2008 respondent terminated the lease by serving a notice under Section

106 of the Transfer of Property Act, 1982 on the appellant. Appellant was called upon to vacate the suit property on or before 31st August, 2008. Instead of vacating the suit property, appellant filed a false and frivolous suit for specific performance. Appellant used to deduct TDS from the rent paid during the pre-notice period which was evident from the TDS certificates. Since appellant failed to vacate the suit property suit for ejectment was filed.

3. Respondent also claimed damages/mesne profit @ ₹1 lac per month and the suit in this regard is still pending.

4. In the written statement, appellant denied that suit property was let out only for residential purpose. It was alleged that physical and actual possession of the suit property was handed over to appellant on 3rd September, 2002 on the basis of oral understanding to lease out the premises. On the same day appellant paid ₹20,000/- in cash towards rent along with a cheque bearing no. 737198 dated 3rd September, 2002 drawn on Indian Overseas Bank, Greater Kailash – II Branch, New Delhi for ₹3 lacs as security deposit. A formal lease agreement was executed on 18th September, 2002 though physical possession of the suit property had been handed

over to appellant on 3rd September, 2002. Lease was for a period of two years. Appellant objected to the contents of lease agreement as it was not properly worded, inasmuch as, it was not mentioned therein that the lease was for commercial purpose. Respondent impressed upon the appellant that the lease was a sham document executed for income-tax purposes and the Municipal Corporation of Delhi and appellant can use the suit property for commercial purposes. Sometime in the last week of March, 2003 respondent represented that he would execute a comprehensive lease agreement which will be self contained if appellant increases the rent from ₹20,000/- to ₹30,000/- per month with effect from 1st April, 2003. Appellant agreed to this proposal, accordingly, in supersession of earlier lease agreement dated 18th September, 2002 fresh lease deed dated 31st March, 2003 was executed even though earlier lease agreement was for a period of two years and was continuing as on that date. Respondent also got some undated blank stamp papers signed from the authorised representative of appellant at the time of execution of new lease deed on 31st March, 2003. Subsequently, respondent said that he was interested in

selling the suit property. Appellant proposed to purchase the same, accordingly, after negotiations, sale consideration was fixed @ ₹1.5 crores. However, respondent was not willing to execute a formal agreement to sell for the reasons best known to him. In view of the above changed circumstances both the lease agreements, that is, dated 18th September, 2002 and 31st March, 2003 came to an end on 13th May, 2003. Security amount of ₹3 lacs was returned by the respondent to appellant vide cheque no. 476352 dated 13th May, 2003 drawn on Punjab National Bank, Hauz Khas Branch, inasmuch as, possession of the suit property was handed over to the appellant pursuant to the oral agreement to sell. Thus, appellant stepped into the shoes of prospective buyer in possession of the suit property. However, on the insistence of respondent appellant continued to pay ₹30,000/- after deducting the TDS every month to the respondent for his recurring expenses and the same was to be adjusted out of the total sale consideration. Subsequently, this amount of ₹30,000/- was increased to ₹35,000/- with effect from January, 2006. Deducted TDS was paid by the appellant to respondent in cash every month. Besides the above monthly part

payment, appellant paid a sum of ₹5 lacs through cheque no. 147950 dated 9th September, 2004 drawn on HDFC Bank to respondent towards part payment. On this occasion also appellant requested the respondent to execute a formal agreement to sell but he avoided to do so on the pretext of pending litigation in Debt Recovery Tribunal (DRT) between him and the bank. Subsequently, appellant came to know that vide order dated 28th January, 2004 DRT had allowed Bank of Maharashtra to sell the mortgaged property, that is, A-140/1, Okhla Industrial Estate, Phase II, New Delhi and in case any outstanding claim remains outstanding same to be recovered from the sale of suit property. When appellant confronted the respondent about this fact he represented that the matter would be compromised with the bank very soon. Later on, oral agreement was reduced into writing vide receipt-cum-agreement dated 21st September, 2004 when a sum of ₹4.75 lacs was paid by the appellant to respondent in cash. In nutshell, appellant has alleged that out of total sale consideration of ₹1.5 crore it has already paid ₹1.14 crore to respondent towards part sale consideration and the relationship of landlord-tenant came

to an end after the respondent agreed to sell the suit property orally and accepted part payment. It was denied that the suit for specific performance was false, frivolous and untenable.

5. In the replication, respondent has denied the allegations levelled in the written statement and reaffirmed the statements made in the plaint.

6. Issues were framed on 18th December, 2009, however, thereafter an application under Order 12 Rule 6 of the Code was filed wherein impugned judgment and decree have been passed by the trial court. Trial court has held that relationship of landlord and tenant between the parties stands admitted; rent was above ₹3,500/- ; tenancy was terminated legally and validly, thus, appellant had no right to continue to retain the possession. Accordingly, decree of possession has been passed. By placing reliance on Pooja Aggarwal versus Sakata Inx (India) Ltd. 2008 x AD (Delhi) 846, trial court has held that in order to invoke the provisions of Order 12 Rule 6 of the Code court has to scrutinize the pleadings in their totality and ignore the evasive and unspecific denials either as to the relationship or as to the service of notice or as to the nature of

tenancy. The defence set up by the appellant, that it was occupying the suit property in independent right pursuant to the oral agreement to sell, has not been accepted by trial court in the order dated 26th April, 2011 passed on an application under Order 39 Rule 10 of the Code, inasmuch as, it was held that in the TDS certificates appellant had admitted his status to be that of a tenant which fact could not have been ignored. TDS certificates being statutory document were sufficient to indicate landlord-tenant relationship between the parties and no oral evidence contrary thereto could have been accepted. The said order has been relied upon by trial court in the impugned judgment so as to conclude that landlord-tenant relationship admittedly existed between the parties.

7. From the facts narrated above, it is evident that the appellant has admitted that it came into possession of suit property pursuant to an unregistered lease agreement dated 18th September, 2002 and had been paying rent of ₹20,000/-. Subsequently, another unregistered lease deed was executed by virtue whereof rent was increased to ₹30,000/-. Thus, it is clear that appellant came into possession of the suit property as a tenant. TDS certificates were

also not disputed by the appellant, inasmuch as, same being statutory documents have rightly been read against the appellant so as to draw an inference about existence of landlord-tenant relationship between the parties. Part B of Chapter XVII of the Income Tax Act, 1968 provides for “deduction of tax at source” by the payer in respect of certain specified payments. Section 194-I of the Income Tax Act, deals with “deduction of tax at source” in respect of rent paid by the tenant to landlord. It mandates a tenant to deduct tax @ 10% from the rent paid to landlord for the use of land or building or land appurtenant to a building. Section 200 of the Income Tax Act further envisages that the amount of tax so deducted shall be deposited with the Central Government against Permanent Account Number of the payee. Section 203 of the Income Tax Act casts a duty on the person to deduct tax at source and deposit the same with the Central Government and also to provide a certificate to the payee (landlord in this case) in a prescribed format. Rule 31 (1) (b) of the Income Tax Rules, 1962 provides that the certificate of deduction of tax at source under Section 194 I shall be in the shape of Form No.16-A. TDS

certificate in the shape of Form 16-A, in this case, relates to the period 1st October 2002 to 31st March 2008 wherein nature of tax deducted has been shown from the rent paid to respondent. It is thus, clear that the appellant continued to pay rent to the respondent uptill the end of March, 2008 and landlord-tenant relationship can be inferred from the admitted TDS certificates. Order 12 Rule 6 CPC is wide enough to afford relief not only in case of admission in pleadings but also in the case of admission dehors pleadings. Thus, admission made in TDS certificates cannot be ignored and will be sufficient to infer categorical admission about the landlord-tenant relationship by the appellant.

8. Learned counsel for the appellant has vehemently contended that TDS certificates were issued on the insistence of the respondent in view of the pendency of DRT litigation. He submits that this defence is required to be proved in evidence, thus, it cannot be said that the appellant had admitted landlord-tenant relationship after the year 2003. He has placed reliance on Smt. Gangabai v/s Smt. Chhububai AIR 1982 SC 20, Ishwar Dass Jain v/s Sohan Lal AIR 2000 SC 426 and Krishnabai Ganpatrao

Deshmukh v/s Appasaheb Tuljaramrao Nimbalkar AIR 1979 SC 1880. I have perused the judgments and find them in the context of different facts. In Gangabai (supra), plea taken was that the sale deed was a sham document and never intended to be acted upon between the parties. In the said case, it was held that bar imposed by Sub Section 1 of Section 92 of the Indian Evidence Act would not be attracted. In Ishwar Dass (supra) also, a plea was taken that the mortgage deed was a sham document and in this context, it was observed that evidence to prove that the mortgage is a sham document was admissible. In Krishnabai (supra), nomenclature of a document was in issue. In this case, Income Tax Act mandated deduction of tax, its deposit with Central Government and the said fact to be reduced in the form of a document, that is, TDS certificate, thus, Sections 91 and 92 of the Indian Evidence Act will be attracted and no oral contradictory evidence would be admissible.

9. Learned counsel for the appellant has next contended that a decree under Order 12 Rule 6 of the Code can be passed only if admission is categorical, unambiguous and unequivocal and not

otherwise. It is not mandatory for the court to pass a decree even if there is an unequivocal admission by a party. Court can decline to pass a decree on admission if passing of a judgment work injustice on the person who has made such unequivocal admission. Reliance has been placed on Himani Alloys Ltd. v/s Tata Steel Ltd. 2011 (7) SCALE 566, Raj Kumar Chawla v/s Lucas Indian Services AIR 2006 Delhi 266, Anup Jindal v/s Jagdish Chander Gupta 103 (2003) DLT 234, Harish Ramchandani v/s Manu Ramchandani & Others 91 (2001) DLT 480, Manisha Commercial Ltd. v/s N.R. Dongre & Anr. 85 (2000) DLT 211, Alka Bose v/s Parmatma Devi air 2009 sc 1525 and Radhika Choudhary v/s Payal Vision Pvt. Ltd. 2011 (123) DRJ 140. Learned counsel for the appellant has further contended that in the instant case admission is neither categorical nor unambiguous, inasmuch as, case of the appellant is that he had been occupying the suit property with effect from 13th May, 2003 pursuant to an oral agreement to sell entered into between the parties. In terms of said oral agreement appellant has already made part payment of ₹1.14 crore in instalments as aforesaid, against the total sale consideration of

₹1.5 crore. Refund of security amount by the respondent further supports the defence of appellant that the landlord-tenant relationship came to an end on 13th May, 2003.

10. Per contra, learned senior counsel for the respondent has vehemently contended that admission regarding relationship of landlord-tenant and rent being above ₹3,500/- is categorical, unambiguous and unequivocal. It is an admitted case of the appellant that it came in possession of the suit property as a tenant. No written agreement to sell was executed between the parties what to talk about a registered agreement to sell. Appellant continued to pay rent and deduct the tax. Thus, benefit of Section 53A of the Transfer of Property Act, 1882 would not be available to the appellant on the plea of part performance. After amendment in Section 17 of the Registration Act, as applicable to Delhi with effect from 24th September, 2001, benefit of Section 53-A can be taken by a party on the plea of part performance only on the basis of a registered document. Appellant cannot be permitted to hold on the possession under the garb of alleged oral agreement. If a tenant is permitted to retain possession on such flimsy pleas it will play

havoc in the society as more and more tenants would start setting up such defences to prolong their ejection. It is further contended that appellant being a company registered under the Companies Act maintains books of account and has also to file balance sheet with the Registrar of Companies every year. No books of account and/or balance sheet(s) have been produced to indicate purchase of the suit property and making of payment to respondent towards part payment. Reliance has been placed on *Om Wati v/s Panchi Devi* 190 (2012) Delhi Law Times 720 (DB), *Sunil Kapoor v/s Himmat Singh & Ors.* 167 (2010) Delhi Law Times 806, *Charanjit Lal Mehra and others v/s Smt. Kamal Saroj Mahajan and others* AIR 2005 SC 2765, *P.P.A. Impex Pvt. Ltd. v/s Mangal Sain Mittal* 166 (2010) Delhi Law Times 84 (DB) and *Uttam Singh Duggal & Co. Ltd. v/s United Bank of India & Others* (2000) 7 SCC 120.

11. In *P.P.A. Impex* (supra), the decree of possession passed by the Single Judge, on an application under Order 12 Rule 6 of the Code, has been upheld by the Division Bench of this Court. In the said case, defendant had claimed an independent right in the suit property pursuant to an agreement to sell. As per the defendant his

defence could have been substantiated only during the trial and no decree on admission could have been passed. Division Bench found the defence of defendant to be moonshine. Division Bench observed thus “the courts are already groaning under the weight of bludgeoning and exponentially increasing litigation. The weight will unvaryingly increase if moonshine defences are needlessly permitted to go to trial”. In *Om Wati* (supra) also, a decree of possession was passed in favour of the landlord on admission of tenant in the written statement-cum-counter claim that she came in possession of the suit premise as a tenant, however, she set up a defence of agreement to sell. In this context, Division Bench of this Court held as under:-

The defence of possession being protected under Section 53A of the Transfer of Property Act, 1882 in the context of the alleged oral agreement was negated by the learned Single Judge holding that Section 53A of the Transfer of Property Act would come into play only when there was a written agreement to sell under which possession was handed over and sale consideration paid.

With respect of the defence taken, we must hold the same to be a sham and of a kind which no Court of justice or equity would countenance. If these kinds of defences are

to be permitted to be set up, it would create havoc in the society. Every tenant would start claiming that some relative of his or hers or he himself rendered some services of effected delivery of certain goods which was to be re-compensated by way of sale consideration for the sale of the tenanted property.

12. Section 17 (1)(A) of the Registration Act which has come into force with effect from 24th September, 2001 reads as under :-

Documents containing contracts to transfer for consideration, any immoveable property for purpose of Section 53-A of the Transfer of Property Act, 1882 shall be registered if they have been executed on or after the commencement of the Registration and other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, they shall have no effect for the purpose of the said Section 53-A.

13. A bare perusal of aforesaid provision makes it clear that a person can protect his possession under Section 53-A of the Transfer of Property Act on the plea of part performance only if it is armed with a registered document. Even on the basis of a written agreement he cannot protect his possession. In this case, plea of existing oral agreement has been set. In any event, in this case, appellant cannot protect his possession under the shield of Section

53-A of the Transfer of Property Act. Even otherwise, mere agreement to sell of an immovable property, even if the plea of oral agreement is accepted for the sake of argument, would not create any right in favour of the tenant-appellant to hold over the possession of the suit property.

14. In Sunil Kapoor (supra), a Single Judge of this Court has held thus “a mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to occupy that property as an agreement purchaser. This Court in Jiwan Das v/s Narain Das, AIR 1981 Delhi 291 has held that in fact no right inure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the petitioner has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.” In the said case also, tenant had filed a suit for specific

performance of agreement to sell. Subsequently, landlord filed a suit for ejectment and mesne profit. In the case filed by the landlord, tenant set up a defence that landlord had agreed to sell the suit property to him. Tenant filed an application under Section 10 of the Code before the trial court for staying the ejectment suit which was dismissed. High Court declined to stay the suit for ejectment till adjudication of the suit for specific performance. It was further observed that plea of part performance in absence of unregistered document cannot be taken by the tenant for protecting his possession. In para 14 it was held as under :-

“Even otherwise, the Stamp Act and the Registration Act as applicable to Delhi were amended w.e.f. 24th September, 2001. After the said amendment an agreement to sell of immovable property whereunder the possession of the premises is delivered in part performance, can only be by a registered document bearing the prescribed stamp duty i.e. on 90% of the total agreed sale consideration. Section 49 of the Registration Act was also amended. A plea of part performance in the absence of a registered document cannot thus be taken. The petitioner/defendant cannot thus protect his possession in part performance of the agreement to sell.”

15. In the light of above discussions, it can safely be concluded that appellant had come into possession of the suit property as a tenant and he continues to be a tenant in view of the admissions made in TDS certificates. Plea of oral agreement to sell is a moonshine defence and has to be ignored. Appellant cannot resist his ejectment as protection under Section 53-A of the Transfer of Property Act is not available to him, in the facts of this case. Admission is categorical, unequivocal and unambiguous and can be inferred from the pleadings coupled with the documents and makes the appellant entitled to a judgment on admission, thus, trial court has rightly passed a decree of possession in favour of the respondent. In *Uttam Singh Duggal (supra)*, in the context of Order 12 Rule 6 of the Code, Supreme Court has held thus “the object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and

also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed. In Charanjit Lal Mehra (supra), similar view has been expressed, inasmuch as, it has been held that any admission can be inferred from the facts and circumstances of the case without any dispute, then, in such a case in order to expedite and dispose of the matter such admission can be acted upon. In Surjit Sachdev v/s Kazakhstan Investment Services Pvt. Ltd. & Others 66 (1997) DLT 54 (DB), this Court has held that admission need not be made expressly in the pleadings. Even on constructive admission Court can proceed to pass a decree in plaintiff's favour.

16. For the foregoing reasons, I am of the view that trial court has rightly held that landlord-tenant relationship admittedly existed between the parties. Rate of rent being above ₹3,500/- was also admitted. As regards termination of tenancy by issuance of notice is concerned, trial court has held that tenancy was month to month basis since lease agreements were unregistered. Tenancy was terminated by issuing a notice under Section 106 of the Transfer of Property Act. Though, initially, learned counsel for the appellant

had raised the plea that the tenancy was not validly terminated but during the course of hearing he has given up his plea in view of the judgment of this Court titled M/s Jeevan Diesels and Electrical Ltd. v/s M/s. Jasbir Singh Chadha (HUF) & Anr. Manu/DE/4323/2011.

17. Appeal is, thus, dismissed being devoid of merits.

A.K. PATHAK, J.

FEBRUARY 06, 2013

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