

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

% Judgment delivered on: October 11, 2013

+ CM (M) No.27/2013

DAVINDER KAUR AND ANR Petitioners

**Through Mr.H.S. Phoolka, Sr. Adv. with
Mr.Amresh Mathur and
Ms.Gursimranjit Singh, Advs.**

versus

KULBIR KAUR AND ANR Respondents

**Through Mr.Sudhanshu Batra, Sr. Adv. with
Mr.Shailender Singh and
Mr.Manmeet Singh, Advs.**

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. By way of the present petition, the petitioners i.e. plaintiffs in the suit proceedings, have assailed order dated 29th August, 2012 passed by the Additional District Judge, Tis Hazari Courts, New Delhi whereby the petitioners' application under Order XII Rule 6 CPC was dismissed.

2. Brief facts for adjudication of the present matter are that the petitioners, namely Davinder Kaur and Harminder Singh (wife and husband) had filed a suit for recovery of possession, arrears of rent and mesne profits/damages for use and occupation against the respondents, namely Kulbir Kaur and Mandeep Singh Baweja (mother and son) in respect of the let out second floor of the property bearing No. DE-125, Tagore Garden, New Delhi (hereinafter referred to as "the suit property").

3. **The case of the plaintiff/petitioner as per plaint**

- i) The petitioner No.1 is the registered owner of 1st and 2nd floors of property bearing No.DE-125, Tagore Garden, New Delhi, built on 200 sq. yds. The petitioner No.1 purchased the roofs rights from Smt. Jeet Kaur, vide registered sale deed dated 18th July, 1996 and then constructed and completed first floor and second floor around January, 1998.
- ii) The second floor of premises No.DE-125, Tagore Garden, New Delhi which was a newly built one, comprising three bed rooms, drawing cum dining, kitchen, 2 bathrooms and balconies, was let out to respondent No.1 for residential purposes only in the year 1998 at a monthly rent of Rs.9500/- i.e. the prevailing market rate of rent in the locality at that time, exclusive of electricity and water charges and the tenancy was oral and was month to month beginning from the first day of every English calendar month. The petitioners submit that when respondent No.1 approached petitioner No.1 in October, 1998, in the presence of Sh. Mohinder Pal Singh Sehgal and she pleaded with petitioner No.1 that she belongs to Sikh community and therefore she be accommodated on sympathetic ground and the second floor of the said property be let out to her. Petitioner No.1 considered her request on sympathetic ground and let the premises without written agreement believing that respondent No.1 would not create any problem. At the time of letting out the said premises, petitioner No.1 agreed to increase the rent by 15% over the last paid rent, after expiry of every two years. No security amount was given by respondent No.1 or by respondent No.2, as claimed by him in the suit filed by him or otherwise.
- iii) Accordingly, after expiry of two years petitioner No.1 several times requested respondent No.1 to increase the rent, but respondent No.1 avoided to increase the rent on one pretext or the other.
- iv) Later on, respondent No.2, son of respondent No.1, along with his family, also started living in the tenanted premises without the permission of petitioner No.1. When petitioner No.1 objected to the same, respondent No.1 gave assurance to petitioner to increase the rent, as agreed, but never paid enhanced rent.

- v) In the month of July 2007, petitioner No.1 approached defendant No.1 to either increase the rent and pay prevailing market rate of rent i.e. ₹25,000/- per month, exclusive of electricity and water charges or vacate the premises after 30 days. Respondent No.1 expressed her inability to pay ₹25,000/- per month as rent, but agreed to pay ₹15,000/- per month from August, 2007. At the same time, respondent No.1 informed petitioner No.1 that she was going to USA to visit her son and on her return back in the month of August 2007 she would pay enhanced rent, as agreed. Therefore, the respondent No.1 agreed to the said proposal.
 - vi) It was latter learnt that respondent No.1 falsely claimed that she was going to USA in 2007, but she went to USA only after one year i.e. in August 2008. In the meanwhile, petitioner No.1 visited respondent No.1 a number of times to collect the rent, respondent No.2 told that respondent No.1 was still abroad. Respondent No.1 is in arrears of rent from August 2008 and has also not paid rent or increased rent from July 2007.
 - vii) On 7th June, 2009, petitioner No.2 along with his son went to collect rent from respondent No.2, when respondent No.2 pushed the son of the petitioners and inflicted blow with iron and rod on the left hand of the son of the petitioners, causing grievous injury for which an Fir has been lodged with P.S. Rajouri Garden, New Delhi.
 - viii) Thereafter, respondent No.1 filed a totally false, frivolous and baseless suit in the Hon'ble High Court of Delhi at New Delhi with an ulterior motive to stick to the premises and for illegal gains against petitioner No.2, falsely claiming that respondent No.2 is the tenant of the premises in question and that the said premises has been let out to him by petitioner No.2 at a monthly rent of Rs.3,000/- plus Rs.5,000/- per month towards user charges for furniture and fitting including air conditioner, refrigerators, sofa, etc. and that he paid Rs.4 lac as deposit with petitioner No.2. Respondent No.2 further wrongly alleged that petitioner No.2 trespassed into the terrace floor of the said property and has forcibly taken possession thereof. The said suit is being vehemently contested by petitioner No.2.
4. The said tenancy however, was terminated vide legal notice dated 28th January, 2010. However, as stated by the petitioners, the respondent No.2

filed an allegedly false, frivolous and baseless suit against petitioner No.2 before this Court claiming that respondent No.2 is the tenant in the suit premises inducted by petitioner No.2 at the monthly rent of Rs. 3,000/- plus Rs.5,000/- per month towards user charges for furniture and fittings and that he had paid Rs. 4 lac as deposit with the petitioner No.2 and that the petitioner trespassed into the terrace floor and forcibly took possession thereof.

5. It is averred by the petitioners that petitioner No.2 is neither the owner nor the landlord and it is only petitioner No.1 who is and has continued to be the landlady/owner of the suit property since the day the suit property was let out till the date of its termination vide admitted legal notice dated 28th January, 2010.

6. It stated that the petitioner No.2 and respondent No.2 have been joined in the proceeding merely as a matter of abundant caution. The petitioners have further averred that the legal notice dated 28th January 2010 terminating the tenancy of the Respondent No.1 and calling upon respondent No.1 to pay the arrears of rent to the petitioner No.1 w.e.f. August 2008 till February, 2010 at the agreed enhanced rate of Rs. 15,000/- per month and thereafter to pay the market rate of damages at the rate of Rs.25,000/- per month was served on both the respondents and was replied to by both the respondents vide reply dated 10th February, 2010.

7. After filing of the written statement, the petitioners filed an application under Order 12 Rule 6 CPC stating that the only ingredients required to be proved by the landlord for grant of relief of recovery of possession against a tenant i.e. the landlord-tenant relationship; premises being beyond the purview of the Act i.e. rent of the premises being more than Rs. 3,500/-; and a valid determination of tenancy either by efflux of

time or by service of statutory notice, have been made out in the present case.

8. It was stated in the application that respondent No.2 filed a false and frivolous case before this Court against petitioner No.2 alleging that Respondent No. 2 was a tenant and petitioner No. 2 the owner/landlord.

Respondent No.2 had filed a petition under Section 45 of the Act against the petitioner No.2 but his application for interim relief was dismissed, however, in an appeal thereof, orders for separate water connection in the absence of the petitioners was passed.

9. Respondents in their reply denied the averments made in the application and stated that the suit filed by the respondents before this Court was disposed of on two fold submissions wherein counsel for the petitioner agreed not to forcibly evict the respondents and counsel for the respondents agreed to give up the relief of mandatory injunction regarding dispossession from the terrace floor.

It was averred that the petitioners had suppressed the fact that the application under Section 27 of the Act preferred by the respondent No.2 is pending adjudication. It was also stated that an FIR was registered on 7th June, 2009 at PS Rajouri Garden against the petitioner no.2 and his son under Section 354/323/506/34 IPC.

10. It was stated that the respondents would establish their defence during the course of trial so the suit cannot be decreed under Order 12 Rule 6 CPC. It was argued on behalf of respondents that there is a triable issue regarding the relationship of landlord and tenant between the parties and there is no admission on the part of the respondents regarding the relationship or the rate of rent.

11. The learned trial court on perusal of the record observed that the respondents had placed on record the photocopy of cheques issued in the name of petitioner No.2. The legal notices issued by the petitioners also showed that the petitioners had only admitted respondent No. 1 as a tenant under the petitioner No.1 whereas, in reply to the said notices, the respondents had reiterated their stand that respondent No. 2 is a tenant under the petitioner No.2, who is the landlord. The learned trial court opined that thus, there is a dispute regarding relationship between the parties. The argument advanced on behalf of the petitioners that since both the petitioners have filed the suit against both the respondents, the issues stand settled, the submissions of the respondents therefore, cannot be accepted. It was observed by the learned trial court that the bare perusal of the order passed by this Court in the matter filed by respondent No.2 against petitioner No.2, shows that the order was passed without prejudice to the rights and contentions of the parties and hence, there was no decision on merits regarding the dispute between the parties in respect of relationship of landlord and tenant.

12. The learned trial court further opined that even if it is accepted that the rate of rent is Rs. 8,000/- p.m. as per the admission of the respondents in their written statement and the notices for termination of tenancy were duly served on the respondents, the basic and the foremost question which remains undecided is whether the respondent No. 1 is the tenant or the respondent No.2 is the tenant.

There is no unequivocal and clear admission on the part of the respondents with regard to the relationship and also there is no documentary evidence on record to prove the case of the petitioners. The learned trial court accordingly opined that the issue of tenancy was required to be proved

by leading evidence by the parties and so the application of the petitioner under Order 12 Rule 6 CPC cannot be allowed.

13. With these observations the learned trial court dismissed the said application vide the impugned order and aggrieved thereof, the petitioner has filed the present petition.

14. I have heard learned Counsels for the parties and perused the record. Order 12 Rule 6 CPC reads as under:

“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.

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

15. The first submission of the respondents is that the respondent No.2 is the actual tenant in the suit property and the petitioner No.2 is the owner/landlord and not petitioner No.1. It is averred that the suit property was let out at a monthly rent of Rs. 3,000/- alongwith separate monthly charges for user of fitting and furniture of Rs. 5,000/- and therefore the suit is barred under section 50 of the Delhi Rent Control Act (hereinafter referred to as “the Act”) as the rent is below Rs. 3,500/-.

16. Although the respondents had disputed the tenancy but the controversy had been set at rest by service notice to quit on both the respondents and impleading both of the respondents in the present suit.

17. The service of legal notice upon them not disputed by the respondents and the suit filed by the respondent No.2 had already been disposed of on the submissions of the counsel for the respondent No.2 and that there exists no dispute about the relationship of landlord-tenant between the petitioner No.1 and respondent No.1. Further, although the respondents have disputed the rate of rent to be Rs.3,000/- alongwith separate monthly chargers for user of fitting and furniture at Rs. 5,000/-, the bifurcation of rent and charges of fittings and fixtures is not permitted and that even then the consolidated rent comes to be Rs. 8,000/- per month.

18. Similar arguments addressed by the tenant in the following referred matters have been dealt with by the Supreme Court and this Court in the case of i) ***Abdul Kader Vs. G.D. Govindaraj (Dead) by LRs.***, (2002) 5 SCC 51. Relevant para 5 reads as under :

“5. The term ‘rent’ has not been defined in the Act and therefore, we shall have to go by the ordinary dictionary meaning of the term, ‘rent’. As held in *Karani Properties Ltd. v. Miss Augustine and Ors.*, the term ‘rent’ is comprehensive enough to include, *all payments* agreed by the tenant to be paid to his landlord for the use and occupation not only of the building and its appurtenances but also furnishing, electric installations and other amenities agreed between the parties to be provided by and at the cost of the landlord. It was very fairly conceded by learned counsel for the appellant that ever since the decision of this Court in the case of *Karani properties Ltd.* , the view being taken consistently by the High Court of Madras is that in the event of taxes having been agreed to be paid by the tenant, the same forms part of the rent. [To wit, see *Messrs. Raval and Company v. K.G. Ramachandran (minor)*]. Thus, there is no doubt that the amount of taxes which was agreed to by the tenant to be paid to the landlord was a part of the rent and the word ‘rent’ in Section 10(2)(i) of the Act has to be construed accordingly.”

ii) Similarly in the case of *Om Prakash Malhotra Vs. Shankar Lal Aggarwal*. RSA No.62/2002 (passed on 14.03.2011) Relevant para 16 reads as under :

“16. It is thus evident and clear that the rent of the affronted property was a consolidated rent; even though the nomenclature of the two agreements was a lease agreement and hire charge agreement for fittings and fixtures. The bar of Section 50 of the DRCA was clearly not attracted. The rent being above Rs.3,500/- i.e. Rs.4,100/-, the Civil Court had jurisdiction to entertain the suit.”

iii) In the case of *S. Kumar Vs. G.R. Kathpalia & Anr.*, 77 (1999) DLT 266 (DB) the Division Bench of this court in para 3 has held as under :

“3. The learned Counsel for the appellant submits that as a matter of fact the rent for the suit premises was Rs. 2,500/- per month and the balance amount of Rs. 1,500/- per month was to be paid on account of use of furniture and fittings provided in the premises. Since no furniture and fittings were actually provided, the appellant according to the Counsel for the appellant was delivered possession of the first floor of the premises in lieu thereof. We are unable to accept this. The argument appears to be preposterous. Firstly, a list of the furniture and fittings provided in the premises is annexed to the lease deed itself. This forms part of the registered lease deed. In view of this, it cannot be said that furniture and fittings were not provided to the tenant. Secondly, the above quoted para of the lease deed shows that the rent of the premises was the consolidated figure of Rs. 4,000/- per month. Here we would also like to note that now the law is settled that in such matters, we have to take into consideration the consolidated figure of rent. Therefore, there is no merit or substance in the argument that the rent was actually Rs. 2,500/- per month and, Therefore, a civil suit was not maintainable.”

19. In this case, the petitioner/landlady has taken the precaution to serve notices under Section 106 of Transfer of Property Act, 1882 on each of respondents individually. Therefore, tenancy stands validly terminated.

Thus all relevant facts stand admitted. Petitioner is, therefore, entitled to decree on the basis of admission of relevant facts under Order 12 Rule 6, CPC. Respondents' plea that the respondent No.2 is the tenant is misconceived, it is their own interpretation which is totally misplaced. No evidence was required to decide the question. Facts admitted between the parties which have already been noticed were sufficient to repel the respondents' contention.

20. The second submission of the respondents is that the proper notice has not been served within the meaning of Section 106 of Transfer of Property Act. In the present case, the petitioner No.1 claimed herself is the owner of the property. In order to avoid objections, both petitioners have served the notice to the respondents. Although as per the case of petitioners, respondent No.1 is the tenant of the suit property and the respondent No.2 is the son of the tenant. The said issue has also been dealt with in various cases. The same are :

i) ***Mrs. Kamal Saroj Mahajan Vs. Mr. Charanjit Lal Mehra & Ors.***, 113 (2004) DLT 788. Relevant paras 7 to 9 read as under :

“7. In this case, the petitioner/landlady has taken the precaution to serve notices under Section 106, TP Act on each of respondents individually. Therefore, tenancy stands validly terminated. No dispute was raised as to the rate of rent increased from time-to-time as also regarding rent due for the months of September-October 2001. Thus all relevant facts stand admitted. Petitioner is, Therefore, entitled to decree on the basis of admission of relevant facts under Order 12 Rule 6, CPC. Defendants' plea that there were four separate tenancies was based on their own interpretation which is totally misplaced. No evidence was required to decide the question. Facts admitted between the parties which have already been noticed were sufficient to repel the defendants' contention.

8. In the result this revision is accepted and the impugned order dated 3.2.2004 is hereby set aside. A decree for possession in respect of premises No. E-1 & E-2, South Extension, Part II, New Delhi, shown in red colour in the site plan and for recovery of arrears of rent amounting to Rs. 7318/- for the months of September-October, 2001 is hereby passed against the defendants with costs. As regards damages/mesne profit for occupation from 1.11.2001 till the date of eviction, learned trial Court will held inquiry under Order 20, CPC and pass appropriate orders.

9. Accordingly, parties are directed to appear before learned trial Court on 15th September, 2004.”

ii) The receipt of legal notice under Section 106 of the Transfer of Property Act is not denied by both the respondents therefore, tenancy in the premises would be a month to month after duly served upon the notice, thus, it stood terminated. Even otherwise now as per settled law, the said objection has lost its value in view of settled law on this aspect.

The Supreme Court in the case of *Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF)*, 2008 (2) SCC 728 held that the filing of the eviction suit under general law itself was notice to quit upon the respondents and thus even as per the alleged claim of the respondent No.2 of a separate tenancy, the same being a month to month tenancy, the same stood terminated on the filing of the suit and service of summons, plaint and documents thereof upon him.

iii) This Court in the case of *Sky Land International Pvt. Ltd. Vs. Kavita P. Lalwani*, 191 (2012) DLT 594 wherein the court has dealt with similar aspect of issue in great details in para 26.7 to 26.12 and 26.17 which read as under :

“26.7 The pleadings are the foundation of litigation and must set-forth sufficient factual details. Experience has shown that all kinds of pleadings are introduced and even false and

fabricated documents are filed in civil cases because there is an inherent profit in continuation of possession. In a suit for ejectment, it is necessary for the defendant to plead specifically as to the basis on which he is claiming a right to continue in possession. A defendant has to show a subsisting right to continue as a lessee. No issue arises on vague pleadings. A vague denial of the receipt of a notice to quit is not sufficient to raise an issue. To rebut the presumption of service of a notice to quit, the defendant has to plead material particulars in the written statement such as where after receiving the plaint and the documents, the defendant has checked-up with the Post-Office and has obtained a certificate that the postal receipt filed by the plaintiff was forged and was not issued by the concerned Post Office.

26.8 A self-serving denial by the defendant and more so in these types of cases, cannot hold back the Court from exercising its jurisdiction to decree a suit under Order XII Rule 6 of the Code of Civil Procedure. Raising a plea of non-receipt of notice to quit and seeking an issue on it is obviously to drag on the litigation and keep on holding to the suit property without having to pay the current market rentals, is not sufficient to raise an issue and, therefore, liable to be rejected.

26.9 If such a plea of denial of notice is treated as sufficient to non-suit the plaintiff, the plaintiff will have to serve a fresh notice to quit and then bring a fresh suit where again the defendant would deny the receipt of notice to seek an issue and trial. The process would go on repeating itself with another notice, in fact, repeat ad-infinitum and in this manner, the defendant will be able to effectively stay indefinitely till the plaintiff settles with him for a price. The Court cannot remain a silent spectator and allow the abuse of process of law. The eyes of the Courts are wide enough to see the truth and do justice so that the faith of the people in the institution of Courts is not lost.

26.10 In view of the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003, no objection with regard to termination of tenancy is permitted

on the ground that the legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of Legislature is therefore clear that technical objections should not be permitted to defeat the decree for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.

26.11 Therefore, even if the notice of termination is held to be invalid, service of summons of the suit for possession can be taken as notice under Section 106 of the Transfer of Property Act read with Order VII Rule 7 of the Code of Civil Procedure but in that event the landlord would be entitled to mesne profits after the expiry of 15 days from the date of the receipt of summons and not from the date of notice of termination.

26.12 The purpose of Order XII Rule 6 CPC is to give the plaintiff a right to speedy judgment. The thrust of amendment of Order XII Rule 6 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. If a dishonest litigant is permitted to delay the judgment on the ground that he would show during the trial that he had not received the notice, the very purpose of the amendment would be frustrated.

26.17 In the last 40 years, a new creed of litigants have cropped up who do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the Courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

iv) In *Usha Rani Jain v. Nirulas Corner House Private Limited*, ILR (2005) II Delhi 349, this Court held as under:-

“17. Though a plea was taken in the written statement about non determination of the lease because no notice to quit as envisaged under Section 106 of the Transfer of Property Act has been served on the defendants before filing of the present suit, but this aspect was not pressed at the hearing. Even otherwise, **it is a well settled proposition of law that when the term of the lease has expired by efflux of time, there is no need for a landlord to determine the lease by serving quit notice.**” (Emphasis supplied)

v) In *Inmacs Limited v. Prema Sinha*, 153 (2008) DLT 311 (DB), the Division Bench of this Court held as under:-

“13. ...If a lease is evidence by a contract, as in the instant case, the duration of the lease would be as per the contract and at the expiry of the lease period as per contract the lease expires by efflux of time. **Expiry of lease by efflux of time results in the determination of the relationship between the lessor and the lessee and since the lease expires under the contract by efflux of time, no notice of determination of the lease is required.**” (Emphasis supplied)

In view of the above, both objections raised by the respondents are without any substance.

21. In the present case following facts and circumstances emerge from the pleadings of the parties :

- (1) there exists relationship of land lord and tenant between the parties;
- (2) notice of termination under Section 106 of TP Act has been duly served;
- (3) the rate of rent exceeded Rs. 3500/-p.m. when the notice under Section 106 of Transfer of Property Act was served.

22. All the three conditions in the present case are satisfied, the finding of the trial court in the application filed by the petitioners are totally contrary to law and cannot be sustained.

23. A bare perusal of Order 12 Rule 6, re-produced above makes it clear that the emphasis is on admission of relevant facts. If the relevant facts have been admitted, the mere fact that the respondents have tried to put their own interpretation to those facts with a view to defeat the claim of the petitioner would not be a sufficient ground to decline relief under Order 12 Rule 6, CPC.

24. In the result this revision is accepted and the impugned order dated 29th August, 2012 is hereby set aside as the impugned order passed by the learned trial court on the face of it is contrary to law, illegal and is not sustainable.

25. A decree for possession in respect of second floor of premises No. DE-125, Tagore Garden, New Delhi, shown in red colour in the site plan is hereby passed against the respondents.

26. As regards damages/mesne profit for occupation, learned trial Court will hold inquiry under Order 20, CPC and pass appropriate orders.

27. Accordingly, parties are directed to appear before learned trial Court on 18th November, 2013.

28. No costs.

(MANMOHAN SINGH)
JUDGE

OCTOBER 11, 2013