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

+ RFA 2/2014

Decided on 22nd August, 2014

PUNJAB & SIND BANK

..... Appellant

Through: Mr. Parminder Singh, Adv.

versus

SHRI BALBIR SINGH KOHLI & ORS

..... Respondents

Through: Mr. D.D. Singh and Mr. Navdeep Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J.(ORAL)

1. Briefly stated, facts of the case, for the purpose of disposal of present appeal, are that property bearing no. B-9, Gujranwala Town, Part-I, Delhi was purchased by the respondents from Shri Raj Tandon in the year 1988. Appellant was tenant in respect of the ground floor and basement of said property right from 1975 onwards (for short, hereinafter referred to as 'suit property'). A registered lease deed was executed between Shri Raj Tandon and appellant on 27th August, 1991 for a period of 5 years, that is, with effect from 1st March, 1990 to 28th February, 1995. Since the suit property was used by the appellant for non confirming use, therefore, proceedings under Section

29(2) of the Delhi Development Act, 1957 were initiated against the erstwhile owner. As per the appellant, penalty imposed by the Delhi Development Authority (DDA) was paid by the appellant initially but subsequently, appellant disputed its liability to pay the same. However, issue regarding payment of penalty is not relevant for the purpose of present appeal since legality of decree of possession passed under Order 12 Rule 6 CPC is the subject matter involved in this appeal.

2. Respondents further alleged that a registered lease agreement was executed between the respondents and appellant on 25th May, 2006 for a period of 5 years commencing from 1st March, 2005 on the payment of monthly rent, as spelled out in the lease deed. Appellant agreed to pay rent on 5th day of each succeeding calendar month. After expiry of 5 years appellant continued to occupy the suit property on one or the other pretext, despite the fact that it had failed to comply with the terms as contained in the lease deed dated 25th May, 2006. Vide notice dated 22nd February, 2010 appellant was informed that since lease was expiring on 28th February, 2010 appellant shall handover peaceful and vacant possession of the suit property to respondent on or before 31st March, 2010. On receipt of this notice appellant sent a reply through its counsel alleging therein that lease stood automatically renewed. Respondent alleged that after expiry of the lease in the year 2010 appellant became tenant

on month to month basis. Rent of the premises was increased after expiry of lease deed on 28th February, 2010 but no registered lease deed was executed between the parties. As on the date of filing of suit appellant was paying rent of ₹81,000/- to the respondents. Appellant did not pay non confirming charges though it assured that it shall be paid. Appellant also assured to vacate the suit premises but to no effect. Appellant continued to hold the possession of the suit property. Accordingly, vide notice dated 21st August, 2012 respondents again called upon the appellant to vacate the suit premises. Since the suit property was not vacated despite service of notice, hence the suit.

3. In the written statement, appellant did not deny that it was inducted in the suit property as a 'tenant' in the year 1975 by the erstwhile owner, inasmuch as, registered lease deed dated 27th August, 1991 was executed. It was not disputed that penalty of ₹95,512/-, as imposed by the DDA on the previous landlord but the same was paid by the appellant. It was also not disputed that respondents had purchased the suit property from the erstwhile owner. Execution of the registered lease deed between the respondents and appellant on 25th May, 2006 was not disputed. Rent as stipulated in the lease deed was also not disputed. However, it was stated that rent was enhanced to ₹67,500/-. According to appellant rent was enhanced with the mutual consent of parties. Receipt of notice dated 25th February, 2010 was also not disputed.

However, it was alleged that in terms of the lease deed dated 25th May, 2006, lease was automatically renewed for two terms of 5 years each on expiry of initial 5 years period. Thus, tenancy could not have been terminated by the respondents vide legal notice dated 1st October, 2012. It was stated in para 10 of the written statement that respondents had not issued any further notice to the appellant to vacate the suit premises.

4. Trial court has held that landlord-tenant relationship was admitted by the appellant. Rent of the premises being more than ₹3,500/- was an admitted fact, thus, suit property was not covered under the Delhi Rent Control Act, 1958. As regards automatic renewal of lease deed is concerned, trial court has held that since no fresh registered lease deed was executed for future period, tenancy was on month to month basis on expiry of five years, accordingly, same could have been terminated by the respondent by serving the notice dated 25th February, 2010 on the appellant. In any case, it was terminated vide notice dated 1st October, 2012 which was sent through registered post at the correct address, thus, a presumption under Section 27 of the General Clauses Act, 1897 is drawn that the same had been duly received by the addressee. Finally, the tenancy stood terminated vide notice dated 1st October, 2012. By placing reliance on **Punjab National Bank vs. Virendra Prakash & Another 188 (2012) DLT 48** and **Sky Land International Pvt. Ltd. vs. Kavita P. Lalwani**

191 (2012) DLT 594, trial court has concluded that respondents were entitled to a decree of possession under Order 12 Rule 6 CPC since above-referred three ingredients were duly established from the admission culled out from the pleadings and documents of the parties.

5. Learned counsel for the appellant has vehemently contended that before passing a judgment on admission under Order 12 Rule 6 CPC, Court has to satisfy itself that defendant has made unambiguous and clear admission of fact either in the pleadings or the documents or otherwise. In case there are no clear and unambiguous admissions made by the defendant no judgment on admission can be passed by the Court. It is further contended that appellant had taken a specific plea in the written statement that lease was for a period of 15 years in view of the Clause 5 of the lease deed, which envisaged that there would be two automatic extensions of 5 years each on expiry of initial term of 5 years that too at the discretion of appellant. On receipt of notice dated 25th February, 2010 appellant had sent a reply to the respondents and also enhanced rent which was accepted by the respondents, thus, notice stood waived. Subsequent thereto respondents continued to accept the enhanced rent, thus, a new tenancy came into existence. Notice dated 1st October, 2012 was never received by the appellant. Service of the subsequent notice was disputed, thus, it cannot be said that there was a clear admission about termination of tenancy.

Accordingly, trial court could not have passed a decree on admission in absence of unequivocal, clear and unambiguous admission. Reliance has been placed on **Sushil Bhardwaj vs. Ved Parkash Shastri & Ors. 163 (2009) DLT 287, Daljit Singh Anand vs. Harjinder Singh Anand 149 (2008) DLT 303, Puran Chand Packaging Industrial Pvt. Ltd. vs. Sona Devi & Anr. 154 (2008) DLT 111 (DB) and Himani Alloys Ltd. vs. Tata Steel Ltd. 2011 (7) SCALE 566.**

6. As regards legal preposition as propounded by the aforesaid judgments, there cannot be any quarrel. It is well settled that a decree on admission under Order 12 Rule 6 CPC can be passed only in cases where clear, unambiguous and unequivocal admission has been made by the one party of the case of the other party. However, as to whether or not there is a clear and unambiguous admission by one party of the case of the other party is a question of fact which depends on the facts of each case. No straight jacket formula can be adopted. Wherever, there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed, a judgment on admission can be passed.

7. In **Charanjit Lal Mehra and Ors. vs. Smt. Kamal Saroj Mahajan and Anr. AIR 2005 SC 2765**, Apex Court held that Order 12 Rule 6 CPC is

enacted for the purpose of and in order to expedite the trials and if there is any admission on behalf of the defendants or an admission can be interred 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. It is trite law that in a suit for possession plaintiff has to prove existence of landlord-tenant relationship between the parties; rent of premises being more than ₹3,500/- per month so as to not to attract the provisions of Delhi Rent Control Act and also termination of tenancy by efflux of time or by a valid notice sent by the plaintiff to the defendant under Section 106 of the Transfer of Property Act. In this regard, judgments titled **Atma Ram Properties Pvt. Ltd. vs. Pal Properties Pvt. Ltd. & Ors. 2002 (62) DRJ 623** and **Sky Land (Supra)** can be referred to with advantage. In case above three ingredients are satisfied from the pleadings or documents, a judgment on admission under Order 12 Rule 6 CPC can be passed.

8. Now, coming back to the facts of the present case, landlord-tenant relationship is not in dispute. Rent being more than ₹3,500/- is also an admitted fact. As regards plea of appellant that tenancy was for a period of 15 years since Clause 5 of the lease deed dated 25th May, 2006 provided extension of two consecutive terms of 5 years each after expiry of initial period is concerned, I do not find much force therein. A perusal of Clause 5 of the lease

deed dated 25th May, 2006 makes it clear that parties had agreed that separate deeds from time to time were to be executed in such an eventuality. Clause 5 reads as under :-

5. The lessors agrees that on the expiry of five years from the date of commencement of this lease the lessee will have the right to continue his occupation as a lessee of the building herein demised for further period of five years on the same terms and conditions. The lessors further agrees that on the expiry of the said options period of five years the lessee will have another option to continue their occupation of the said demise building for another period of five years on the same terms and conditions automatically unless the lessee gives one month notice of their intention to surrender the lease. But it will be done by separate deeds from time to time.

(emphasis laid)

9. A perusal of last line of the aforesaid Clause makes it clear that parties had agreed for extension of two consecutive periods of 5 years each on expiry of initial period of 5 years only by executing separate deeds from time to time. Admittedly, in this case, no such lease deed was executed after expiry of initial period, inasmuch as, respondents served a legal notice dated 25th February, 2010 thereby calling upon the appellant to vacate the suit premises. The status of appellant thereafter became that of a tenant on month to month basis. Mere acceptance of rent simplicitor would not amount to extension of lease for another period of five years in absence of registered lease deed. In the facts of

this case, even if it is presumed that by accepting the enhanced rent respondents had waived the said notice even then status of appellant remained that of a tenant on month to month basis. Respondents by serving a notice dated 1st October, 2012 through registered A.D. post again terminated the tenancy and on such termination appellant was left with no option but to vacate the suit property. In the written statement, no categorical assertion has been made that notice dated 1st October, 2012 was not received by the appellant. Appellant has simply stated that no notice was served. Even otherwise, service can be inferred from the documents. Postal receipt was placed on record. Notice was sent through registered post and envelope was not received back by the respondents as undelivered. It is not the case of appellant that address mentioned in the notice is incorrect. If that is so, then a presumption under Section 27 of the General Clauses Act arises that the notice was received by the addressee. Indubitably, this presumption is rebuttal. However, appellant did not place on record of the trial court any certificate issued by the postal authority that registered cover was not delivered to appellant. That apart, service of notice is not of much importance since service of summons in suit along with plaint itself amounts to notice under Section 106 of the Transfer of Property Act. Please refer to **Nopany Investments (P) Ltd. vs. Santosh Singh (HUF) 146 (2008) DLT 217 (SC) and Jeevan Diesels and Electricals Ltd.**

vs. Jasbir Singh Chadha (HUF) and Anr. 182 (2011) DLT 402. In **Nopany** (Supra), Apex Court held that service of notice under Section 106 of the Act was not necessary as filing of eviction suit under the General Law itself amounted to a notice to a tenant. In **Jeevan Diesel** (Supra), it has been held thus :-

“(iv) Another reason for rejecting the argument that the tenancy would not be terminated by the legal notice Ex.PW1/3 is that the Respondents/Plaintiffs admittedly filed a copy of this notice along with the suit way back in the year 2007. Once the summons in the suit along with documents were served upon the Appellant/tenant, the Appellant/tenant would obviously have received such notice. Even if we take this date when the Appellant/tenant received a copy of the notice when served with the documents in the suit, once again, the period of 15 days has expired thereafter and keeping the legislative intendment of amended Section 106 in view, the Appellant therefore cannot argue that the tenancy is not terminated and he did not get a period of 15 days to vacate the premises. I am in view of this position consequently entitled to take notice of subsequent events under Order 7 Rule 7 CPC, and taking notice of the subsequent events of the expiry of 15 days after receipt of a copy of the notice along with documents in the suit, I hold that the tenancy has been validly terminated, and as on date, the Appellant/tenant has no right to stay in the premises and consequently the decree for possession was rightly passed by the trial Court.”

10. Special Leave Petition filed against the **Jeevan Diesel** (Supra) has already been dismissed by the Apex Court. In this case, admissions can safely be culled out with regard to the fact that there existed landlord-tenant relationship between the respondents and appellant; rent of the suit premises being more

than ₹3,500/-, provisions of Delhi Rent Control Act were not attracted and that tenancy was duly terminated. In a suit for possession by a landlord against tenant only aforesaid three ingredients are required to be established before passing a decree on admission. Thus, in my view, trial court has rightly passed a decree of possession under Order 12 Rule 6 CPC.

11. For the foregoing reasons, appeal is dismissed.

A.K. PATHAK, J.

AUGUST 22, 2014

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