

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

+ CM(M) 283/2013

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24th July , 2014

INDERJIT SINGH CHEEMA & ANR. Petitioners

Through: Mr. Sushil Kumar Pandey, Adv.

VERSUS

NEXT WORLD IMMIGRATION SERVICES ASSOCIATES

..... Respondent

Through: Mr. R.K.Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This petition under Article 227 of the Constitution of India is filed against the impugned orders of the trial court dated 3.11.2012 and 5.2.2013. By the order dated 3.11.2012, the application of the petitioners/plaintiffs under Order 12 Rule 6 CPC for granting the relief of possession with respect to the suit /tenanted premises has been dismissed. By the order dated 5.2.2013 the application of the petitioners/plaintiffs for payment of arrears of rent was dismissed. Since one petition cannot be filed against two separate orders on two separate applications having two separate subject matters, on the request of the counsel for the petitioner this petition

is taken as a petition for challenging only the order dated 3.11.2012 by which the application under Order 12 Rule 6 CPC has been dismissed. At the request of the petitioner, liberty is granted to challenge the order dated 5.2.2013 by means of appropriate proceedings in accordance with law.

2. At the outset I must express my surprise and consternation in the trial court dismissing such an important application under Order 12 Rule 6 CPC by just a one line order as under:-

“On hearing the arguments, in my considered opinion, judgment on admissions cannot be passed.”

3. Such type of a non-speaking order is unheard of in our jurisprudence. An order passed by a court has necessarily to be a speaking order including because only a speaking order will show the reasoning thereof so that an appellate court can understand the validity of the reasons. It is wholly impermissible in law to pass a one line order dismissing an application as crucial as an application under Order 12 Rule 6 CPC in a suit for possession filed by a landlord against a tenant.

4. The facts of the case are that the petitioners/plaintiffs filed the subject suit for possession and mesne profits against the respondent/defendant-company with respect to the tenanted premises being
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ground floor property no. 25, Yusuf Sarai, New Delhi-110016. Petitioners/plaintiffs claimed that the original owner of the property was one Sardar Balwant Singh who expired on 13.6.1991. The suit property was thereafter leased out to the respondent/defendant-company by three persons as per the written statement filed by the defendant-company namely Smt. Satwinder Kaur, Sh. Jasbir Singh Cheema and Sh. Gurpreet Singh. Smt. Satwinder Kaur and Sh. Gurpreet Singh and Sh. Jasbir Singh who are the legal heirs of one deceased son Gurmit Singh Cheema, son of late Sh. Balwant Singh. Gurmit Singh, the predecessor-in-interest of Smt. Satwinder Kaur, Sh. Jasbir Singh Cheema and Gurprit Singh had only 1/6th co-ownership rights in the suit property because Sh. Balwant Singh died leaving behind the five other legal heirs besides Gurmit Singh Cheema. The other five legal heirs are Smt. Darshan Kaur (daughter), Smt. Gurmeet Kaur (daughter), Smt. Rupinder Kaur (daughter) and Sh. Inderjeet (son) and Sh. Gurdev Singh (son). The lease deed dated 1.8.2010 was created in favour of the respondent-defendant/company with rent admittedly at Rs.25,000/- per month. The lease is an unregistered lease deed, and consequently, the period of three years as mentioned in the lease deed will not be the period of lease, inasmuch as, tenants under an unregistered lease deed is only a month to month tenant. The five other legal heirs of Sh. Balwant Singh (including

one deceased Sh. Gurmeet Singh Cheema through his three legal heirs) by a registered relinquishment deed relinquished their $\frac{4}{6}^{\text{th}}$ undivided share in the property no. 25, measuring 144 sq. yds Yusuf Sarai, New Delhi in favour of the petitioners/plaintiffs who are two sons of Sh. Balwant Singh. These two sons in whose favour, the other five co-owners had relinquished their rights by virtue of the registered relinquishment deed dated 1.9.2011, have filed the subject suit against the respondent/defendant/tenant.

5. A reading of the written statement shows that there is no dispute that the defendant company is a tenant. Defendant-tenant claims to have taken the lease of the premises under the unregistered lease deed dated 1.8.2010 from Smt. Satwinder Kaur, Sh. Jasbir Singh Cheema and Sh. Gurpreet Singh who were the wife and sons of late Sh. Gurmit Singh Cheema, the late son of Sardar Balwant Singh. Since Gurmit Singh Cheema had only $\frac{1}{6}^{\text{th}}$ co-ownership rights in the suit property, the fact of the matter is that the lease deed which was created in favour of the defendant-company was only by $\frac{1}{6}^{\text{th}}$ co-owners of the suit property. The validity of the lease itself therefore would be in question but I need not look into this aspect because not only the fact is that the three year period under the unregistered lease deed has come to an end but also that the respondent/tenant-company

is only a month to month tenant whose tenancy was terminated by means of a legal notice dated 30.9.2011. The aspect with respect to sending of legal notice has been mentioned in para 7 of the plaint and in para-7 of the parawise reply in the written statement there is no denial by the respondent-defendant/company of having received this notice terminating the tenancy.

6. Ordinarily, I would have remanded the case back to the trial court for passing a speaking judgment, however, since this Court is empowered under Order 41 Rule 24 read with Order 42 Rule 1 CPC to decide the matter on the basis of the record of the court below, I have in the interest of justice heard the parties on merits so far as the application under Order 12 Rule 6 is concerned.

7. In the city of Delhi in order to succeed in a suit for possession against a tenant, three aspects are required to be proved/admitted: (i)existence of relationship of landlord and tenant; (ii) rent being more than Rs.3,500/- per month so as to take the tenancy out of the protection of the Delhi Rent Control Act, 1958 and (iii) serving of a notice under Section 106 of the Transfer of Property Act, 1882 terminating the monthly tenancy.

8. So far as the first aspect of relationship of landlord and tenant is concerned, the respondent-defendant/company does not dispute that it is a

tenant. Respondent-defendant/company only disputes the ownership of the petitioners/plaintiffs. In my opinion, respondent/defendant has no locus standi to dispute the ownership of the petitioners/plaintiffs in a suit for possession against a trespasser including a tenant whose tenancy has been terminated because plaintiff in such a suit has only to show a better entitlement to possession than the respondent/defendant. The admitted fact is that the suit premises were let out to the respondent-defendant/company by three persons namely, Satwinder Kaur, Sh. Jasbir Singh Cheema and Sh. Gurprit Singh who are the widow and sons respectively of Sh. Gurmit Singh Cheema one son of Late Balwant Singh and petitioners/plaintiffs being co-owners as legal heirs of Sh. Balwant Singh are surely as co-owners entitled to file the suit as even one co-owner can file a suit against a tenant if there are no objections of other co-owners and there being no objection to the suit by any other legal heirs of Sh. Balwant Singh. Also, in the registered relinquishment deed dated 1.9.2011, all these three persons who let out the premises to the defendant-company are parties, and therefore, the petitioners/plaintiffs are clearly the exclusive owners of the suit property. Petitioners/plaintiffs, as already stated, would definitely be the co-owners even if there was no relinquishment deed because the two petitioners/plaintiffs are two sons of late Balwant Singh. Every owner/co-

owner of a property is automatically a landlord because every owner is entitled to exercise all rights of a landlord including of receiving the rent. Therefore, in the facts of the present case, looking at the matters from any angle, the petitioners/plaintiffs are owners/landlords and were therefore entitled to file the subject suit for possession.

9. The second aspect of the rent being more than Rs.3500/- per month is also not disputed because the admitted rent is Rs.25000/- per month.

10. So far as the third aspect of termination of tenancy by a legal notice is concerned, as already stated above, the tenancy has been terminated by a legal notice dated 30.9.2011 as stated in para 7 of the plaint to which there is no denial in para 7 of the parawise reply in the written statement. In any case, it is now the settled law so far as this Court is concerned that even the service of a summons of the suit can be taken as a notice under Section 106 of the Transfer of Property Act, 1882 in view of the judgment in the case of *M/s Jeevan Diesels and Electricals Limited Vs. Jasbir Singh Chadha (HUF) and Anr.(2011) 183 DLT 712*. Para 7 of this judgment is relevant and which reads as under:-

“7. The second argument that the legal notice dated 15.7.2006 was not received by the appellant, and consequently the tenancy cannot be said

to have been validly terminated, is also an argument without substance and there are many reasons for rejecting this argument. These reasons are as follows:-

(i) The respondents/plaintiffs appeared in the trial Court and exhibited the notice terminating tenancy dated 15.7.2006 as Ex.PW1/3 and with respect to which the registered receipt, UPC and AD card were exhibited as Ex.PW1/4 to Ex.PW1/6. The notice admittedly was sent to the correct address and which aspect was not disputed before the trial Court. Once the respondents/plaintiffs led evidence and duly proved the service of legal notice, the appellant/defendant was bound to lead rebuttal evidence to show that the notice was not served although the same was posted to the correct address. Admittedly, the appellant/defendant led no evidence in the trial Court. In fact, even leading of evidence in rebuttal by the appellant would not have ordinarily helped the appellant as the notice was sent to the correct address. In my opinion, therefore, the trial Court was justified in arriving at a finding that the legal notice dated 15.7.2006 was duly served upon the appellant resulting in termination of the tenancy.

(ii) The Supreme Court in the case of **Nopany Investments (P)Ltd. Vs.Santokh Singh (HUF) 2008 (2) SCC 728** has held that the tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of *Nopany (supra)* I hold that even assuming the notice terminating tenancy was not served upon the appellant (though it has been served and as held by me above) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant.

(iii) In the suits for rendition of accounts of a dissolved partnership at will and partition of HUF property, ordinarily it is required that a notice be given of dissolving the partnership at will or for severing the joint status before the filing of such suits because such suits proceed on the basis that the partnership is already dissolved or the joint status of an HUF stands severed by service of notices prior to the filing of such suits. However, it has been held in various judicial pronouncements that the service of summons in the suit will be taken as the receipt of notice of the dissolution of the partnership or severing of the joint status in case of non service of appropriate notices and therefore the suits for dissolution of partnership and partition of HUF property cannot be dismissed on the technical ground that the partnership was not dissolved before filing of the suit or the joint status was not severed before filing a suit for partition of the HUF property by serving of appropriate notices. In my opinion, similar logic can be applied in suits for possession filed by landlords against the tenants where the tenancy is a monthly tenancy and which tenancy can be terminated by means of a notice under Section 106 of the Transfer of Property Act. Once

we take the service of plaint in the suit to the appellant/defendant as a notice terminating tenancy, the provision of Order 7 Rule 7 CPC can then be applied to take notice of subsequent facts and hold that the tenancy will stand terminated after 15 days of receipt of service of summons and the suit plaint. This rationale ought to apply because after all the only object of giving a notice under Section 106 is to give 15 days to the tenant to make alternative arrangements. In my opinion, therefore, the argument that the tenancy has not been validly terminated, and the suit could not have been filed, fails for this reason also. In this regard, I am keeping in view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003 and as per which Amendment 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 substantial justice and the suit for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.

(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 alongwith the suit way back in the year 2007. Once the summons in the suit alongwith 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 alongwith 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.”

An SLP against the said judgment being SLP No.15740/2011 has been dismissed by the Supreme Court on 7.7.2011.

11. In view of the fact that there is no dispute and there exists admissions with respect to existence of relationship of landlord and tenant, tenancy being only a monthly tenancy which has been terminated by means of notice under Section 106 of the Transfer of Property Act, 1882 taken with the fact that the service of summons in the suit can be taken as a notice in the suit and the tenancy does not have the protection of DRC Act, 1958, and the court below has committed a gross illegality in dismissing the application under Order 12 Rule 6 CPC.

12. Application of the petitioners/plaintiffs under Order 12 Rule 6 CPC is therefore allowed by allowing this appeal by setting aside the impugned order dated 3.11.2012. Suit so far as the relief of possession is concerned, is decreed under Order 12 Rule 6 CPC and in favour of the petitioners/plaintiffs decree is passed for possession with respect to the property bearing no. 25, ground floor, Yusuf Sarai, Delhi-16. Parties are left to bear their own costs.

JULY 24, 2014
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VALMIKI J. MEHTA, J.