

. * IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment pronounced on: January 22, 2014

+ C.R.P. 90/2012

RAJINDER KUMAR AGGARWAL DHARAMSHALA TRUST

..... Petitioner

**Through Ms.Shobha Aggarwal, Adv. with
Mr.Pranav Jain, Adv.**

versus

OM PRAKASH VERMA

..... Respondent

Through Mr.Surender Kumar Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner (plaintiff before the learned trial Court) has assailed the order dated 11th May, 2012 whereby the application filed by the petitioner under Order XII Rule 6 CPC was dismissed.

2. Brief facts for the purpose of adjudication of the present petition are that the petitioner had filed a suit for recovery of possession, permanent injunction and recovery of damages/mesne profits against the respondent in respect of the building bearing No. 3/165, Mohalla Ganga Ram, Teliwara, Shahdara, Delhi- 32 (hereinafter referred to as “the suit property”) on the ground that the petitioner is the owner thereof and the respondent is in an unlawful and unauthorized occupation of two rooms situated on the first floor of the suit property (hereinafter referred to as the “tenanted premises”).

3. The respondent contested the suit and averred that the suit was liable to be dismissed under Order 7 Rule 11 CPC for want of cause of action. It was denied that the respondent is in unlawful or unauthorised occupation of the tenanted premises and it was stated that the father of the respondent was a tenant under Mr. Shankar Lal Aggarwal at ₹100/- per month and after the death of the father, the respondent became a tenant subsequently. It was stated that the respondent is a tenant under Mr. Shankar Lal and not the petitioner. It was also denied that the respondent is liable to pay the damages as claimed by the petitioner.

4. After the completion of petitioners evidence, it is averred by the petitioner that one of the documents filed by the respondent, which is a certified copy of the judgment in a civil suit filed by the father of the respondent, the father of the respondent had claimed himself to be under the tenancy of the petitioner, hence the title of the petitioner with regard to the tenanted premises was admitted. Thereafter, the petitioner filed the application under Order 12 Rule 6 CPC on the basis of admission made by the respondent as alleged by the petitioner.

5. The petitioner averred that on death of the tenant in occupation, his surviving spouse became the tenant and such status then terminated with her death and does not devolve further on any of her heirs, and so in the present case, the status of the tenant as contended by the respondent rested with the father of the respondent and after his death, such status shifted on his surviving spouse, i.e. the mother of the respondent and on her death, such status never shifted in favour of her son i.e. the respondent. It was averred that the respondent did not fall within the definition of 'tenant' under the Delhi Rent Control Act (hereinafter referred to as "the Act"), and he cannot

claim the right of tenancy through succession and even if, such right could be claimed, the respondent had lost such right by neglecting to pay the rent to the petitioner or depositing the rent with the Controller as per Section 27 of the Act.

6. The respondent did not file a reply to the said application and his counsel directly addressed the arguments. It was submitted by the respondent that earlier the father of the respondent was the tenant in the tenanted premises and one of the trustee of the petitioner namely Smt. Laxmi had issued rent receipt in favour of the father of the respondent and that his tenancy was never terminated by the petitioner. It was also submitted that PW-1 had admitted in her examination and cross-examination that the respondent was in possession of the tenanted premises for the last 24 years and thus the suit of the petitioner is time-barred.

7. It was submitted by the respondent that a number of triable issues were involved as to whether the respondent was an unauthorised occupant for the last 24 years or he has inherited the tenancy right of his deceased father or that the suit of the petitioner is barred under Section 50 of the Act and so the application under Order 12 Rule 6 CPC filed by the petitioner could not be allowed.

8. The learned Trial Court on perusal of the record observed that the certified copy of the previous litigation showed that the father of the respondent was in possession of the tenanted premises since 1973 and that the rent receipts which were issued on the letter head of Shri Shankar Lal Aggarwal, showed that the father of the respondent used to pay ₹100/- as rent. The learned Trial Court opined that as per the definition of 'tenant' under Section 2(1) of the Act, the tenancy is heritable, because the petitioner

had failed to place on record any document showing that the tenancy of the deceased father of the respondent was ever terminated by the petitioner and in absence of any termination of tenancy, the tenancy rights are always heritable.

9. The learned Trial Court opined that it is a question of trial whether the father of the respondent was tenant in the tenanted premises because the petitioner had averred that the respondent is an unauthorised occupant, while the respondent took the plea that he is a tenant therein since the time of his deceased father at the rent of ₹100/- per month and also filed the rent receipts thereof.

10. The learned Trial Court opined that mere admission by the respondent that the petitioner is the owner of the suit property, a judgment cannot be passed because there are number of triable issues involved and to determine the same, evidence of the parties was required to be recorded.

11. With these observation, the learned Trial Court passed the impugned order dismissing the application of the petitioner and aggrieved thereof, the petitioner filed the present petition under Section 115 CPC.

12. Learned counsel appearing on behalf of the petitioner has referred to number of decisions in support of the petitioner's case. All the said decisions so referred pertain to the merit of the case, however, in the present case, on the basis of the facts and issues involved in the matter, the learned Trial Court found that the trial in the matter is necessary.

13. Even otherwise, if some case under the provisions of Order 12 Rule 6 CPC is made out, the Court still exercise its discretion not to pass the order

under the said provision if the Court feels that on certain issue the trial is required even the other side has a weak case on merit.

14. The legal position with regard to scope of revision under Section 115 CPC as it stands today has been well-settled since the Supreme Court ruling of *Shiv Shakti Co-operative Housing Society, Nagpur v. M/s. Swaraj Developers*, AIR 2003 SC 2434. The Apex Court analysed the position both prior as well as post Amendment Acts of 1976 and 1999 and very well reiterated the difference between an appeal and a revision in the following paragraphs:

“13...It is fairly well-settled position in law that the right of appeal is a substantive right. But there is no substantive right in making an application under Section 115.

15. ..Language of Sections 96 and 100 of the Code which deal with appeals compared with Section 115 of the Code. While in the former two provisions specifically provide for right to appeal, the same is not the position vis-à-vis Section 115. It does not speak of an application being made by a person aggrieved by an order of subordinate court. As noted above, it is a source of power of the High Court to have effective control on the functioning of the subordinate courts by exercising supervisory power.”

The court summed up the present legal position in the following paragraphs :

“14.... Section 115 is essentially a source of power for the High Court to supervise the subordinate courts. It does not in any way confer a right on a litigant aggrieved by any order of the subordinate court to approach the High Court for relief. The scope for making a revision under Section 115 is not linked with a substantive right.”

“32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in

favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is 'yes' then the revision is maintainable. Suit on the contrary, if the answer is 'no' then the revision is not maintainable. Therefore, if the impugned order is of interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject matter of revision under Section 115. There is marked distinction in language of Section 97(3) of the Old Amendment Act and Section 32(2) (i) of the Amendment Act. While in the former, there was clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered the parties are to proceed according to the altered made, without exception, unless there is a different stipulation.”

“33...Section 6 of the General Clauses Act has no application because there is no substantive vested right available to a party seeking revision under Section 115 of the Code.”

15. 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.”

16. A bare perusal of Order 12 Rule 6 CPC 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 respondent has 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. Even some of the averments made in the application were not pleaded in the plaint. The same may be relevant and have some merit in the case of the petitioner, however, I am of the considered view that the prayer made in the application under Order 12 Rule 6 CPC cannot be granted in view of facts and circumstances of the present case.

17. Rather the respondent has raised large number of issues which require trial. It might be permissible that issues may be determined as false and flimsy after conduct of the trial but in view of the pleadings of the matter, the respondent's right to produce evidence cannot be closed by allowing the application under Order 12 Rule 6 CPC by reversing the impugned order which has been passed after hearing both the parties.

18. The matter is at the stage of respondent's evidence. The petitioner already adduced evidence. Thus, I am not inclined to interfere with the impugned order except the direction to expedite the trial. With these directions, the present petition and pending application(s) stand disposed of.

19. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 22, 2014