

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

% *Judgment pronounced on: February 17, 2014*

+ **CM(M) 1070/2013 & CM No.15803/2013**

SHRI KASTURI LAL MEHRA Petitioner
Through Mr.Rajat Aneja, Adv. with
Mr.Ishaan Chhaya, Adv.

versus

M/S NARSHI PHARMACEUTICAL & SURGICAL (P) LTD
..... Respondent
Through Mr.Narsingh Narain Rai, Adv. with
Mr.B.K. Jha, Adv.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The petitioner by way of the present petition under Article 227 of the Constitution of India has assailed the order dated 19th September 2013 whereby the application filed by the petitioner under Order XII, Rule 6 read with Section 151 CPC was dismissed.
2. Brief facts for the purpose of adjudication of the present petition are that the petitioner had filed a suit for possession and damages/mesne profits against the respondent in respect of the property bearing No. 9615, Gali No.12, measuring about 26.72 sq. yards, situated at Sadar Thana Road, Pahar Ganj, New Delhi- 110055 (hereinafter referred to as the “suit property”).
3. It is the case of the petitioner that the suit property was let out to the respondent at a monthly rent of ₹8,500/- exclusive of all other charges for a

period of five years with effect from 25th June, 2007 to 25th May, 2012 on the basis of a duly registered lease deed dated 25th June, 2007. It has been stated that since the period of tenancy had already expired and the petitioner has not renewed the tenancy, the defendant became tenant at sufferance and is in unauthorised occupation since 25th May 2012.

4. It is stated that one of the clause in the lease deed mentioned that if the lessee failed to vacate the premises within the stipulated time, then in that event the lessee shall be liable to pay double the amount of rent. It has been contended by the petitioner that the said clause has been misinterpreted by the respondent who has been sending double the rent after deducting TDS, which has been accepted by the petitioner without prejudice to the rights of filing the suit for possession.

5. It has been stated by the petitioner that though the lease expired by efflux of time, however, the petitioner sent a notice dated 17th May 2012 to the respondent, despite receipt of which, the respondent failed to vacate the suit property. Hence the petitioner filed the suit for possession against the respondent.

6. In the written statement filed by the respondent it was averred that the petitioner had suppressed the fact that the petitioner entered into an Agreement to Sell dated 1st May 2012 with the brother in law of the Director of the respondent, Deepak Chhabra and had also received earnest money of ₹2,00,000/- from him. It was further contended that the respondent gave an amount of ₹60,000/- as security at the time of execution of the lease deed on 25th June 2007. The respondent denied that the tenancy had ended, rather it was contended that the tenancy continued at ₹17,000/- per month which is

double amount of the rent as per clause 3 of the lease deed which is accepted by the petitioner without taking the plea of “without prejudice to his rights”.

7. Since as per the petitioner, the respondent admitted in its written statement certain facts such as: the lease was for a period of five years starting from 25th June 2007, rate of rent of ₹8,500/-, payment of double rent, notice dated May 2012, the petitioner prayed for decree of possession on the basis of these admissions.

8. The learned Trial Court while dismissing the application of the petitioner, observed that though the respondent admitted the lease deed and the rate of rent, however, the contention of the respondent that an Agreement to Sell was executed between the plaintiff and Deepak Chhabra raised a triable issue, more so because the agreement to sell had been executed after the expiry of the lease deed, as alleged.

9. The learned Trial Court opined that if the agreement to sell had been executed between the parties then the status of parties has changed from lesser-lessee to vendor-vendee. Since the agreement is disputed, whether the parties changed their status was a issue of fact and could be decided only after leading evidence. Accordingly the learned Trial Court dismissed the application of the petitioner.

10. Aggrieved thereof the petitioner filed the present petition before this Court. It is the case of the petitioner that the defence of an Agreement to Sell is not a legal defence available to tenant in a suit for ejectment filed by the landlord since the tenant would continue to be as before i.e. tenant who tenancy has been determined. Reliance in this regard has been placed on the decision of this Court in *Sunil Kapoor Vs. Himmat Singh and Ors.*, 167 (2010) DLT 806.

11. It has also been contended by the petitioner that in light of Section 111 (d) of the Transfer of Property Act, 1882, merely because an Agreement to Sell has been entered into by the landlord, the lease between tenant and landlord shall not be terminated and the liability of the lessee to pay rent will continue.

12. On the other hand, the respondent has averred that as per Section 53 A of the Transfer of Property Act, 1882, the respondent is entitled to retain his possession of the suit property. It is stated that the agreement to sell is admitted by the petitioner as per notice dated 18th June 2012, which was entered between one of the director of the respondent, Deepak Chhabra.

13. 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.”

14. 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.

15. In the present case, admitted facts are that the petitioner/plaintiff is the owner/landlord in respect of the commercial property bearing No.9615, Gali No.12, Sadar Thana Road, Paharganj, New Delhi. The said shop was let out to the respondent/defendant vide a duly registered lease deed dated 25th June, 2007 for a period of 5 years w.e.f. 25th June, 2007 to 25th May, 2012 for a sum of Rs.8500/- per month.

16. On the verge of expiry of the agreed lease term of 5 years, the petitioner sent a legal notice dated 17th May, 2012 calling upon the respondent to vacate the lease premises which was refused vide reply to the legal notice dated 11th June, 2012 of the respondent. A rejoinder to the reply to the legal notice was thereafter sent by the petitioner on 18th June, 2012 reiterating his request to vacate. In view of refusal to vacate the leased premises, the petitioner was constrained to file a suit for possession mesne profits/damages.

17. The respondent in its written statement has admitted the following contents :

- a. The execution of the lease deed dated 25th June, 2007, i.e. the landlord-tenant relationship between the petitioner and respondent, and the rate of rent being Rs.8500/- p.m.
- b. The expiry of the lease deed dated 25th June, 2007, on 25th May, 2012 and the retention of the leased premises beyond the agreed lease term.

c. That the legal notice of termination was also admitted by the respondent.

18. The entire case of respondent however is that the respondent is not liable to vacate the leased premises for two reasons. The first one is that the petitioner had no locus standi to file the suit on account of the ownership being allegedly alienated to a third party inasmuch as the petitioner allegedly executed an agreement to sell dated 1st May, 2012 with the brother-in-law of the Director of the respondent company. Secondly, the respondent had acquired the right to retain possession of the leased premises simply by virtue of paying double the amount of rent.

19. As per settled law, the defence of the agreement to sell is not a legal defence available to a tenant in a suit for ejectment filed by the landlord since the tenant would continue to be as before, i.e. a tenant whose tenancy has been determined, as was held by this Court in ***Sunil Kapoor vs. Himmat Singh and Ors.***, 167 (2010) DLT 806 wherein it was observed as under:-

“11. 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. Narain Das* AIR 1981 Delhi 291 has held that in fact no rights enure 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.

12. Section 53A of the Transfer of Property Act codifies the doctrine of part performance. A purchaser of immovable property, who in pursuance to an agreement to sell in writing has been put into possession of the property, is entitled to so remain in possession. However, in the present case, there is no agreement to sell in writing.

15. What follows is that even if the petitioner/defendant were to succeed in his suit for specific performance of agreement to sell, till the execution of a conveyance deed in pursuance to the decree, if any, in favour of the petitioner, the petitioner has no ground in law to save his possession of the premises. The status of the petitioner would continue to be as before i.e. of a tenant whose tenancy has been determined.

16. Once that is found to be the position in law, the defence of the agreement to sell is not a legal defence available to the petitioner in the suit for ejectment. If that be so, there is no common question involved in the previously instituted suit for specific performance and the subsequently instituted suit for ejectment.

17. I also find that beside the judgments relied by the counsel for the respondents/plaintiffs, another Single Judge of the Andhra Pradesh High Court in Gollu Bhavani Sankar v. Bhogavalli Rajeswara Rao and the Madhya Pradesh High Court in Prakash ChandSoni v. Anita Jain have also refused to stay the eviction proceedings due to pendency of suits for specific performance of agreement to sell.”

20. In the present case, the learned Civil Judge, while passing the impugned order dated 19th September, 2013 has thus failed to appreciate the aforementioned facts and law and thus, the impugned order is not sustainable in law.

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.
- (4) rent was always tendered on behalf of respondent.

22. All the three conditions in the present case are satisfied, the findings of the trial court in the application filed by the petitioner are totally contrary to law and cannot be sustained as the learned Trial Court has not considered the fact that the respondent has admitted the receipt of notice of termination and the rate of rent is more than ₹3500/-. The relationship of landlord tenant is admitted by the respondent. It is settled law that where a claim is admitted, the Court has jurisdiction to pass a decree on admitted claim without leading any evidence in this regard.

23. Admittedly, after expiry of the lease period there is no fresh lease deed executed between the parties. Thus, the tenancy has become month to month after the notice of termination issued by the petitioner.

24. For the reasons as aforesaid, facts and settled law in this regard, I am of the view that the trial in the matter is not required as the parties are not at issue on any question of law or fact to be determined further. The provisions of Order XII Rule 6 CPC are therefore applicable.

25. In view of the settled provisions of law on this aspect, I am of the view that the petitioner is entitled for the decree of possession in respect of the suit property in his favour against the respondent. The trial Court has wrongly given its finding despite of the settled law on this aspect. In fact, the application under Order XII, Rule 6 CPC to the extent of prayer for grant of decree of possession ought to have been allowed. The application filed by the petitioner under Order XII, Rule 6 CPC is accordingly allowed. The impugned order dated 19th September, 2013 is set aside. Thus, a decree for possession is passed in favour of the petitioner and against the respondent, in respect of the property bearing No. 9615, Gali No.12, situated at Sadar Thana Road, Pahar Ganj, New Delhi- 110055.

26. However, the operation of the present judgment and decree in respect of possession would become operative with effect from 1st June, 2014.

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

28. Accordingly, parties are directed to appear before learned trial Court on 20th March, 2014.

29. No costs.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 17, 2014