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

+ **RFA 628/2014**

Decided on 2nd December, 2014

UNION OF INDIA

..... Appellant

Through : Mr. Anurag Ahluwalia, Adv.

versus

RASHID JUNG

..... Respondent

Through : Mr. Wasim Ashraf, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J.(Oral)

Caveat No. 1065/2014

1. Since caveator has appeared, caveat is discharged.

CM Appl. No. 19770/2014 (exemption)

2. Allowed, subject to all just exceptions.
3. Application is disposed of.

RFA 628/2014

4. Arguments heard and material placed on record perused.
5. On an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 ("Code", for short) filed by the respondent, trial court has passed a decree of possession in favour of respondent and against the appellant in respect of the tenanted premises, that is, ground floor of

property known as Park Mansion, Sar Syed Ahmad Road, Darya Ganj, New Delhi – 110002 (hereinafter referred to as “suit property”). Aggrieved by the judgment and decree dated 11th September, 2014 passed by the trial court, appellant has preferred this appeal.

6. Facts of the case, relevant for the disposal of present appeal, are that respondent, being co-owner of the suit property, filed a suit for possession and recovery of damages/mesne profits against the appellant. He alleged that his father had leased out the suit property to appellant in the year 1951 vide a Lease Deed. Lease was renewed from time to time and the last such lease executed between the parties expired in the year 1988. Thereafter, no fresh lease deed was executed, though some talks of extension of lease took place between the parties. Request of respondent for execution of lease on enhanced rent remained unaddressed by the appellant. Respondent demanded rent @ ₹33/- per square feet as per the MCD rates applicable for Darya Ganj locality but respondent declined to pay the same. Respondent filed a writ petition being WP(C) No. 5706/2007, which was disposed of vide order dated 2nd February, 2009, in accordance with the admissions of appellant and a monthly rent of ₹17,014/- was fixed with liberty to the respondent to claim further amounts and such other remedies as may be

available to him under the law at appropriate forum. Since respondent was not willing to keep appellant as tenant, appellant was called upon to vacate the suit property within two months vide legal notice dated 12th October, 2009. However, possession of the suit property was not handed over by the appellant to respondent. Instead appellant sent a reply dated 10th December, 2009. Appellant was in unauthorized possession of the suit property since 1988. Since possession was not handed over despite legal notice dated 12th October, 2009, hence the suit.

7. In the written statement, appellant did not deny that respondent was joint owner of the suit property. However, it was alleged that suit was bad for mis-joinder of necessary parties as other co-owner was not impleaded. It was not disputed that appellant was occupying the suit property as a “tenant”. It was denied that appellant was in illegal occupation of the suit property after expiry of the lease. Appellant alleged that rent was increased from time to time. Lastly, rent was increased to ₹17,014/- in terms of decision of Floor Rent Assessment Committee (FRAC) dated 29th June, 2007. Appellant alleged that rent @ ₹17,014/- was paid regularly, in terms of the decision of FRAC coupled with the order passed by the High Court. It was alleged that appellant requested for execution of the fresh Lease Deed

but issue remained pending on the part of respondent. Rent was fixed by the FRAC after calculating the same as per the Government norms. Fresh Lease Deed could not be executed due to non-cooperation of appellant. It was alleged that notice dated 12th October, 2009 was not delivered in the office of Secretary of the concerned Ministry but was served on the Senior Superintendent of Post Office (defendant no. 2), who was not a 'competent authority'. There was no valid termination of tenancy for the want of a valid notice under Section 106 of the Transfer of Property Act, 1882 ("the Act", for short). Thus, suit was not maintainable.

8. From the perusal of written statement, it is clear that landlord – tenant relationship between the parties is not in dispute. Appellant did not dispute that its status in the suit property was that of a "tenant". It is also not in dispute that respondent was the co-owner and landlord in respect of the suit property. Rent of the suit property being ₹17,014/-, that is, more than ₹3,500/- is also not in dispute. No plea has been taken in the written statement that suit is hit by Section 50 of the Delhi Rent Control Act, 1958 ("DRC Act", for short). It is also not in dispute that suit property is in possession of defendant no. 2. Receipt of the notice dated 12th October, 2009 is also not in dispute. In the plaint, a specific averment was made that

notice was replied by the defendant. This fact has not been disputed in the written statement. Only plea taken is that no proper notice under Section 106 of the Act was issued and the suit was filed without impleading other co-owner.

9. Contention of the appellant that suit is not maintainable having been filed by the co-owner has no force. Supreme court in **Sri Ram Pasricha Vs. Jagannath and Ors. AIR 1976 SC 2335** in context of the suit for eviction filed by the co-owner has held thus:

“25. Jurisprudentially it is not correct to say that a co-owner of a property is not its owner. He owns every part of the composite property along with others and it cannot be said that he is only a part-owner or a fractional owner of the property. The position will, change only when partition takes place.”

10. A Full Bench of Allahabad High Court in **Gopal Das and Anr. Vs. Ist Addl. District Judge, Varanasi and Ors. AIR 1987 ALL 261**, after placing reliance on various judgments has held that one co-owner can bring an action for eviction of the tenant, and it is not necessary to implead all the co-owners in such proceeding. Thus, plea of appellant that suit was bad for mis-joinder of parties as other co-owner was not impleaded as a party is not well founded and is, thus, rejected.

11. It would be relevant at this stage to refer to Order XII Rule 6 of the Code, which reads as under:-

“Order XII – Admission (The First Schedule)

6. 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.

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

12. A perusal of the aforesaid provisions makes it clear that the said provision envisages that 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. The whole object of incorporating

the procedure of Order XII Rule 6 of the Code is to grant a quick relief to commercial litigants whenever the Court finds any legally enforceable admission, the Court will help the litigants to get quick relief.

13. In **Uttam Singh Duggal & Co. Ltd. vs. United Bank of India, (2000) 7 SCC 120**, in the context of Order XII Rule 6 of the Code Supreme Court has held thus: “the object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.” In **Charanjit Lal Mehra and Ors. Vs. Smt. Kamal Saroj Mahajan and Anr. AIR 2005 SC 2765**, Supreme Court held that Order XII Rule 6 of the Code 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.

14. In **Ms. Rohini Varshnei vs. R.B. Singh, 155 (2008) DLT 440**, a Division Bench of this Court has held thus: “It is trite to say that in order to obtain a judgment on admissions, the admissions must be clear and unequivocal. In the matter of landlord and tenant, there are only three aspects which are required to be examined:

- i) A relationship of landlord and tenant;
- ii) Expiry of the tenancy of efflux of time or determination by valid notice to quit; and
- iii) The rent of the premises being more than ₹3,500/- per month in view of the provisions of the said Act.”

15. Similar view has been expressed in **Atma Ram Properties Pvt. Ltd. vs. Pal Properties Pvt. Ltd. & Ors. 2002 (62) DRJ 623** and **Sky Land International Pvt. Ltd. vs. Kavita P. Lalwani 191 (2012) DLT 594**. Coming back to the facts of this case, landlord – tenant relationship between the respondent and appellant is not in dispute. Rent of the premises being more than ₹3,500/- is also an admitted fact. As regards notice under Section 106 of the Act is concerned, it has not been disputed that respondent had served a notice dated 12th October, 2009 on the appellant. It is trite law that nomenclature of the documents will not make any difference. It is the contents of the documents, which have to be seen to construe the real import of the

subject matter in issue. By the said notice, appellant was called upon to handover the vacant possession of the suit property within two months, which meets the requirement of Section 106 of the Act. That apart, service of summons along with the plaint itself amounts to notice under Section 106 of the Act. In **Nopany Investments (P) Ltd. vs. Santosh Singh (HUF) 146 (2008) DLT 217 (SC)**, Supreme Court held that tenancy would stand terminated under general law on filing of a suit for eviction. In **Jeevan Diesels and Electricals Ltd. vs. Jasbir Singh Chadha (HUF) and Anr. 182 (2011) DLT 402**, it has been held as under:-

“(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.”

16. It may be noted here that Special Leave Petition against the Jeevan Diesel (supra) has been dismissed by the Supreme Court.

17. In **Payal Vision Limited vs. Radhika Choudhary (2012) 11 SCC 405**, Supreme Court has held thus “in a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the court can pass a decree in terms of Order 12 Rule 6 CPC”. In this case, admissions can safely be culled out with regard to the fact that there existed landlord-tenant relationship between the respondent and appellant; rent of the suit property 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. In this case, all the above three ingredients have been established.

18. For the foregoing reasons, appeal is dismissed. However, keeping in mind the a post office is being run from the suit property, appellant is granted four months time to vacate the suit property.

C.M. No. 19769/2014 (Stay)

Application is disposed of as infructuous.

A.K. PATHAK, J.

DECEMBER 02, 2014

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