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HIGH COURT OF DELHI AT NEW DELHI

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RSA No.385/2014 & CM No.20363/2014 (for stay)

Decided on : 21st January, 2015

BRIJ LAL

..... Appellant

Through: Mr. Sudhir Nagar, Advocate.

versus

KULDEEP KAUR

..... Respondent

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J. (ORAL)

1. This is a regular second appeal filed by the appellant against the judgment dated 03.09.2014 passed by the learned ADJ upholding the judgment dated 07.08.2013 of the learned trial court passing a preliminary decree of possession in favour of the respondent/plaintiff and against the present appellant/defendant.

2. Briefly stated the facts of the present case are that the respondent/plaintiff filed a suit for possession on account of arrears of rent and mesne profit.

3. The case set up by the respondent/plaintiff was that the present appellant was a tenant on the ground floor of the suit property i.e. 2151/6A, New Patel Nagar, Delhi with effect from 01.07.2006 on a

monthly rent of Rs.4,500/- apart from water and electricity charges. It was alleged that later on the rent was increased to Rs.5,000/-. It had also been stated that the tenancy was on month to month basis and the appellant/defendant had not paid rent since August, 2009. Vide a legal notice dated 07.07.2012, his tenancy had been terminated and instead of complying with the notice and handing over of the possession of the suit property to the respondent/plaintiff in terms of the agreement, the appellant/defendant continued to occupy the suit property and hence the present suit was filed.

4. A reference was also made in the plaint that the appellant/defendant had filed a petition before the Additional Rent Controller under Section 45 of the Delhi Rent Control Act, which was dismissed and then he filed a suit which was disposed of with the directions to the respondent/plaintiff that she will not dispossess the appellant/defendant without due process of law.

5. The present suit was contested by the appellant/defendant. He admitted that the rent was Rs.5,000/- per month and that there was a relationship of landlord and tenant between the respondent/plaintiff and the appellant/defendant. However, he disputed that he had paid

rent only up to August, 2009 and on the contrary in his written statement, he stated that he had paid the rent up to July, 2012. The receipt of legal notice terminating his tenancy was also disputed by the appellant/defendant. However, it had been contended by him that the appellant was assured of continuance of his tenancy by the respondent/plaintiff in case the appellant/defendant pays a sum of Rs.4 lakhs to her. The appellant/defendant has stated that on 09.08.2012, he had paid a sum of Rs. 4 lakhs to the son of the respondent/plaintiff as suggested by the respondent/plaintiff and as a consequence of which, the respondent/plaintiff was to not claim rent from the appellant/defendant for a period of three years.

6. After completion of pleadings, the respondent/plaintiff filed an application under Order 12 Rule 6 CPC to which reply was called for and the learned Civil Judge passed a preliminary decree of possession in favour of respondent/plaintiff and against the appellant/defendant on 07.08.2013 by observing that the appellant/defendant had admitted that he was a tenant in the suit premises on a month to month basis. The rent of Rs.5,000/- being in excess of Rs.3,500/- was also not in dispute though the receipt of notice was denied by the

appellant/defendant. However, the court observed that filing of the suit itself is a notice in terms of the judgment of the Apex Court in *M/s Nopany Investments (P) Ltd. V.Santokh Singh*; AIR 2008 SC 673. With regard to payment of Rs.4,00,000/- by the appellant/defendant to the son of the respondent/plaintiff, the court observed that as no counter claim/set off has been pleaded, the said payment has no bearing on the claim of the respondent/plaintiff. Therefore, a preliminary decree of possession was passed in favour of the respondent/plaintiff and against the appellant/defendant.

7. The appellant/defendant, feeling aggrieved by the order of the learned trial court dated 07.08.2013, preferred a first appeal before the learned ADJ who upheld the judgment of the learned trial court by observing that so far as the payment of Rs.4,00,000/- by the appellant/defendant to the son of the respondent/plaintiff is concerned, that is not acceptable and as no counter claim has been filed for the same, the appellant/defendant can avail separate legal remedies in accordance with law against the said allegation.

8. Still feeling aggrieved, the appellant/defendant has preferred the present regular second appeal. The second appeal is admissible

when there is a substantial question of law involved in the matter. It has been laid down by the apex court in a number of judgments that the perversity in the finding of fact in the light of the evidence or otherwise is a question of law. Reliance in this regard may be had to *Kulwant Kaur v. Gurdial Singh Mann (dead) by L.Rs. and others*; AIR 2001 SC 1273.

9. In the instant case, I feel that the finding of fact returned by the courts below with regard to the payment of Rs.4,00,000/- purported to have been made by the appellant/defendant to the son of the respondent/plaintiff suffers from perversity. One cannot lose sight of the fact that the preliminary decree for possession has been passed on the basis of admission purported to have been made by the appellant/defendant in his written statement.

10. However, before dealing with the facts to see as to whether there is an admission or not, it may be pertinent to refer to Order 12 Rule 6 CPC which 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 part 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 up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.”*

11. The aforesaid provision has been a subject matter of judicial pronouncements in a number of cases and it has been repeatedly held by the said judicial pronouncements that before an admission in the pleadings or otherwise is read against a party, before passing a judgment under Order 12 Rule 6 CPC on the basis of an admission, the said admission must be unambiguous & unequivocal. Reliance in this regard may be had to *Puran Chand Packaging Industrial P. Ltd. v. Sona Devi & Anr.*; 154 (2008) DLT 111 (DB) and *R.K.Markan v. Rajiv Kumar Marken & Anr.*; 97 (2002) DLT 754.

12. It has also been held that while reading an admission in the written statement or in other pleading of the party, the document as a whole is to be read and not that one sentence or one paragraph is torn out of context.

13. In the light of the aforesaid facts, if we see the written

statement filed by the appellant/defendant, it can by no stretch of imagination be said that the appellant/defendant has made an unambiguous and unequivocal admission, which would have warranted passing of a preliminary decree of possession against the present appellant/defendant.

14. It may be pertinent here to refer to the written statement where no doubt the appellant/defendant has admitted that he is a tenant in respect of the ground floor and that there is a relationship of landlord and tenant, it is also not disputed that the tenancy is oral and on month to month basis and the rent is Rs.5,000/- per month. He has categorically stated that the respondent/plaintiff had agreed to extend the tenancy of the appellant/defendant if he paid a sum of Rs.4,00,000/- to the respondent/plaintiff or if the respondent/plaintiff was not to available, the payment of said amount to her son. It has been averred in the written statement that this amount of Rs.4,00,000/- was actually paid by him in the presence of Mr.Mohan Lal s/o Sh.Gainda Ram, R/o N-291, Raghubir Nagar, Delhi and Sh.Ram s/o Late Mathura Dass, R/o Nav Durga Mohalla, Gali No.21, 183/B-1, Baljeet Nagar, New Delhi. As a consequence of this

payment, it was assured to the appellant/defendant that the respondent/plaintiff would not claim any rent for a period of three years. If that be so, the tenancy gets extended as an oral tenancy from month to month basis. The relevant averments made in para 10 of the written statement read as under:

“That on 09.08.2012, the plaintiff had orally apprise the fact to the defendant that the plaintiff is in dire need of money to the tune of Rs.4,00,000/- and requested the defendant either to pay a sum of Rs.4,00,000/- to the plaintiff or in the absence of the plaintiff to pay the same to her son namely Manjeet Singh. It is submitted here that the plaintiff had orally given the assurance to the defendant that if the defendant pays a sum of Rs. 4,00,000/- to the plaintiff, then the plaintiff shall not demand the rent of the tenanted premises continuously for a period of three years. The plaintiff had also assured to the defendant that the plaintiff shall sell the tenanted premises to the defendant if in future the plaintiff shall dispose of the premises and accordingly the defendant had given a sum of Rs.4,00,000/- cash to the son of the plaintiff namely Manjeet Singh in the absence of the plaintiff. It is submitted here that the abovesaid money was given to the son of the plaintiff namely Manjeet Singh in presence of (1) Sh.Mohan Lal son of Sh.Gainda Ram R/o N-291, Raghubir Nagar, Delhi and (2) Shri Ram son of Late Mathura Dass, R/o Nav Durga Mohalla, Gali No.21, 183/B-1, Baljeet Nagar, New Delhi. It is submitted here that Manjeet Singh looks after the affairs of the tenanted premises. It is submitted here that prior

to giving a sum of Rs.4,00,000/- to the son of the plaintiff, the electricity supply of the tenanted premises was disconnected and the plaintiff assured to the defendant that if the aforesaid amount is given by the defendant to the plaintiff or her son as stated above in that situation the electricity supply shall be restored and accordingly the plaintiff had restored the electricity supply of the tenanted premises after receiving a sum of Rs.4,00,000/- from the defendant.”

15. In the light of the aforesaid facts, if the stand of the appellant/defendant is accepted by the court after examination of the appellant/defendant as well as two witnesses which he may like to produce during the course of recording of evidence, it may knock out the case of the respondent/plaintiff in its entirety and, therefore, the admission purported to have been made by the appellant/defendant could not be treated to be an unambiguous or unequivocal admission so as to warrant passing of preliminary decree of possession in favour of the respondent/plaintiff. I feel that the judgment of the trial court dated 07.08.2013, upheld by the first appellate court vide order dated 03.09.2014 by observing that payment of Rs.4,00,000/- purported to have been made by the appellant/defendant to the son of the respondent/plaintiff has nothing to do with the creation of tenancy or

that no counter claim has been filed by the appellant/defendant, is bereft of any logic or merit and in my opinion. The appellant/defendant was not required to file any counter claim. It was good enough for him to have claimed that his tenancy gets extended by implication on account of the payment of the aforesaid amount which would have been on month to month basis. This is the perversity with which the concurrent findings returned by the two courts below suffer. Therefore, the present regular second appeal is allowed and the judgment and decree passed by the trial court vide order dated 07.08.2013 and judgment of the first appellate court dated 03.09.2014, upholding the view taken by the trial court, are set aside.

16. The parties are directed to appear before the learned trial court on 15.02.2015 where after the learned trial court is directed to proceed ahead with the matter after framing of issues and finish off trial as expeditiously as possible. Expression of any opinion herein before may not be treated as an expression on the merits of the case. A copy of the order be sent to the trial court and be given *dasti* to the learned counsel for the parties.

V.K. SHALI, J

JANUARY 21, 2015/dm