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

+ RFA 210/2014

Decided on 24th December, 2014

AMITABH VERMA

..... Appellant

Through : Mr. Rajat Aneja and Ms. Rashmi
Verma, Advs.

versus

SNEH LATA MALHOTRA

..... Respondent

Through : Mr. K.K. Bhuchar, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K.PATHAK, J. (Oral)

1. Appellant has assailed the decree of possession dated 31st March, 2014 passed by the trial court under Order 12 Rule 6 of the Code of Civil Procedure, 1908 ("the Code", for short) in respect of the suit property, that is, E-5, Ground Floor, Greater Kailash-II Enclave, New Delhi. As regards other reliefs including mesne profits, suit is still pending.

2. Respondent alleged in the plaint that suit property was let out to appellant vide a registered Lease Deed dated 26th February, 2009 on a monthly rent of ₹14,000/-. Appellant stopped paying rent with effect from

April, 2009. As on the date of filing of the suit ₹ 1,26,000/- was due and outstanding towards the rent. Accordingly, respondent terminated the tenancy vide legal notice dated 19th August, 2009, sent to appellant through speed-post; whereby appellant was called upon to handover possession of suit property to respondent on 1st October, 2009 and also to clear the arrears of rent. Since the possession was not handed over by the appellant to respondent, hence, the suit.

3. In the written statement, it was not denied that suit property was let out by the respondent to appellant. However, it was denied that respondent had let out the ground floor of property no. E-5, Greater Kailash-II, New Delhi to the appellant vide Lease Deed dated 26th February, 2009. The suit property was not properly described in the plaint. It was alleged that Lease Deed was a forged document. Appellant claimed that entire ground floor was let out by the respondent on 31st January, 2009 vide an oral agreement. Tenancy commenced from 1st February, 2009 and was for a period of three years. However, it was not denied that rent of the tenanted premises was ₹14,000/- per month, besides electricity and water charges. Appellant denied that he did not pay rent from April, 2009 onwards. Appellant denied the receipt of notice dated 19th August, 2009. Appellant claimed that

tenancy was not terminated by a legal and valid notice. Certain other pleas were also taken but same are not relevant for the purpose of disposal of this appeal, since in a suit for possession, plaintiff/landlord has to establish only following three ingredients:-

- “a) There exists landlord – tenant relationship between the parties;
- b) Rent being more than ₹ 3,500/- per month so as to oust the applicability of Section 50 of the Delhi Rent Control Act, 1958;
- c) Termination of tenancy under Section 106 of the Transfer of Property Act, 1882 (“the Act”, for short).”

4. 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 Jatinder Nath Gupta vs. STC of India MANU/DE/1869/2012, a learned Single Judge of this court has held that

while dealing with an application under Order 12 Rule 6 CPC, relating to a suit for possession, three factors must be satisfied by the landlord: (i) the landlord tenant relationship should not be disputed; (ii) the rate of rent should be over ₹3,500/-; and (iii) the tenancy should have been validly terminated. Similar is the view expressed in *Atma Ram Properties Pvt. Ltd. vs. Pal Properties Pvt. and Ors.*, 2002 (62) DRJ 623, *Punjab National Bank vs. Virendra Prakash & Another* 188 (2012) DLT 48 and *Sky Land International Pvt. Ltd. vs. Kavita P. Lalwani* 191 (2012) DLT 594.

5. Order 12 Rule 6 of the Code reads as under:-

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 an 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 up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

6. A perusal of the above provision makes it clear that object of Order 12 Rule 6 of the Code is to enable a party to obtain speedy judgment on admission, at least to the extent of relief in respect whereof admission of the fact has been made by the opposite party. Meaning thereby, if a fact alleged by the plaintiff is admitted by the defendant in the pleadings or otherwise the judgment on such admission can be passed by the court so as to ensure the compliance of whole objective of incorporating the procedure as enshrined under Order 12 Rule 6 of the Code. The procedure of Order 12 Rule 6 of the Code is to grant a quick relief to commercial litigants, whenever court finds any legal admission of facts made in pleadings or otherwise, either orally or in writing, the court will help the litigant to get quick relief. In *Charanjit Lal Mehra and Ors. vs. Smt. Kamal Saroj Mahajan and Anr.* AIR 2005 SC 2765, Supreme Court held that Order 12 Rule 6 of the Code is enacted for the purpose to expedite the trials and if there is any admission on behalf of the defendants or an admission can be inferred 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.

7. Now coming back to the facts of this case, it is not in dispute that appellant is a tenant of respondent in the suit property. It is also not in

dispute that rent of the suit property is more than ₹3,500/- per month. As regards plea of appellant that no legal and valid notice was issued since it was dispatched on an incorrect address is of no consequence. Service of summons along with the plaint itself amounts to notice under Section 106 of the Act.

8. In **Nopany Investments (P) Ltd. vs. Santokh Singh (HUF) 146 (2008) DLT 217 (SC)**, Supreme Court held that service of notice under Section 106 of the Act was not necessary as filing of eviction suit under the General Law itself amounted to a notice to a tenant. In **Jeevan Diesels and Electricals Ltd. vs. Jasbir Singh Chadha (HUF) and Anr. 182 (2011) DLT 402**, it has been held thus :-

“(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.”

9. It may be noted that Special Leave Petition against the Jeevan Diesels (supra) has already been dismissed by the Supreme Court. In view of the above settled legal position, I do not find any force in the contention of learned counsel for the appellant that notice of termination of tenancy was not validly served on the appellant. Learned counsel for the appellant has next contended that issues had already been framed in the suit and the matter was at evidence stage, thus, no decree of possession could have been passed by the trial court that too while disposing of Review application of the appellant. A perusal of Order 12 Rule 6 of the Code makes it clear that Court can exercise its jurisdiction under the said provision at any stage, thus, merely because issues had been framed cannot, by itself, deter the Court to pass a judgment on admission under Order 12 Rule 6 of the Code. In *Parivar Seva Sansthan Vs. Dr. (Mrs.) Veena Kalra and Ors.* AIR 2000 Delhi 349, a Division Bench of this Court has held that use of the expression "any stage" in the said Rule itself shows that the legislature's intent is to give it widest

possible meaning and framing of issues will not come in the way of passing the judgment on admission under the said Rule. A perusal of Order 12 Rule 6 of the Code indicates that judgment on admission can be passed by the Court even on its own motion and at any stage, thus, trial court has not committed any error in passing the judgment on admission even in absence of any formal application made by the respondent.

10. For the foregoing reasons, appeal is dismissed.

A.K. PATHAK, J.

DECEMBER 24, 2014

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