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

+ **CS(OS) 3197/2012**

Decided on 2nd September, 2015

MAHESH CHANDER JOSHI

..... Plaintiff

Through : Mr. Ajay Bahl and Mr. Lalit Bahl,
Advts. with plaintiff in person.

versus

MAHKARWATI & ANOTHER

..... Defendants

Through : Mr. Jagat Singh and Ms. Deepa Arya,
Advts. with defendants in person.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

I.A. No.23482/2014 (u/O 12 R 6 CPC by plaintiff)

1. Plaintiff has filed this suit against the defendants for possession, recovery of damages to the tune of ₹50,00,000/- with consequential relief of permanent injunction.

2. Plaintiff has alleged in the plaint that defendants are husband and wife. They had taken a loan of ₹15,50,000/- from the plaintiff on 3rd September, 2006 vide loan agreement dated 13th September, 2006 for six

months. Original documents pertaining to the suit properties bearing no.3/352, 3/353 and 3/354, Khichri Pur, Delhi were handed over to the plaintiff as security. These were plots of land admeasuring 25 Sq. Yards each along with the superstructures standing thereon. The defendant no.2, in partial discharge of his liability, handed over seven post dated cheques on 13th September, 2006 to the plaintiff totalling to ₹12,50,000/-. Out of these seven cheques, only one cheque of ₹50,000/- was encashed. However, remaining six cheques were dishonoured on presentation. Accordingly, plaintiff filed a complaint under section 138 of The Negotiable Instruments Act, 1881 (The 'Act', for short) before the Metropolitan Magistrate, Delhi. During the pendency of the complaint, name of defendant no.1 was dropped. Complaint continued against the defendant no.2.

3. After trial, the defendant no.2 was convicted under section 138 of the Act. The defendant no.2 was sentenced to six months and also to pay compensation of ₹16,50,000/- to plaintiff. Appeal filed by the defendant no.2 was dismissed. Thereafter, the defendant no.2 filed a Revision Petition before the High Court, wherein a compromise was arrived at between the plaintiff and defendant no.1 vide compromise deed dated 20th May, 2011. Criminal Revision Petition was disposed of on 2nd June, 2011 in view of the

compromise arrived at between the plaintiff and defendant no.1 and the offence was compounded.

4. Vide compromise deed, the defendant no.1 had, *inter alia*, agreed to transfer the properties bearing no.3/352 and 3/353 in the name of plaintiff after release of her husband from prison. The defendant no.1 has executed the necessary documents, that is, Power of Attorney, Agreement to Sell, etc. in favour of the plaintiff with regard to the properties bearing no.3/352 and 3/353. Power of Attorney was duly registered with the Sub-Registrar, Delhi on 23rd May, 2011; whereas Agreement to Sell was executed on 27th May, 2011. These documents were executed pursuant to the compromise arrived at between the plaintiff and defendant no.1 in the Revision Petition. However, the defendants did not hand over the possession of the aforesaid properties to the plaintiff despite requests, hence the suit.

5. In the written statement, execution of compromise deed has not been disputed. The plea taken by the defendant no.1 is that plaintiff had fraudulently got executed Sale Deed from the defendant no.1 at the time when her husband was still in judicial custody. The said Sale Deed purports to transfer more properties than it is envisaged in the compromise deed. It has been further stated that loan was not taken. As regards cheques, which

were involved in the complaint under section 138 of the Act, are concerned, it is stated that same were stolen. Apart from this, no other plea has been taken in the written statement.

6. Order 12 Rule 6 of the Code of Civil Procedure 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 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. ”

7. A plain reading of Order 12 Rule 6 CPC makes it abundantly clear that it is open to the court to pass a judgment on admissions in the pleadings or otherwise. The said provision clearly indicates that it is open to the Court to pronounce judgment on the statement made by the parties and documents on record can be taken note of de hors the pleadings. Admission may be made either specific or constructively. If the Court is satisfied that the

admission made by a party is unambiguous, a decree can straightaway be passed without taking recourse to trial. Admission can also be inferred from the pleading and documents.

8. In this case, it emerges from the record that complaint under section 138 of the Act was filed by the plaintiff against the defendants wherein the defendant no.2 was convicted. Appeal was also dismissed. Criminal Revision Petition being no.48/2011 was filed by the defendant no.2 and during the pendency of the said petition, a compromise deed dated 20th May, 2011 was executed between the plaintiff and defendant no.1. This compromise deed was produced before the Court in the Revision Petition and only in view of the compromise, Revision Petition was disposed of on 2nd June, 2011. General Power of Attorney and Agreement to Sell were executed by the defendant no.1 well before 2nd June, 2011. A perusal of order dated 2nd June, 2011 shows that defendant no.2 was present in court with his counsel. No such plea was taken before the Court on 2nd June, 2011 that compromise deed was obtained fraudulently or any document was got executed by the plaintiff fraudulently. It was also not stated before the Court that plaintiff had obtained the documents including the properties where were not even part of compromise deed. Even otherwise, a perusal of

the compromise deed makes it clear that properties bearing no.3/352 and 3/353 are involved therein and were to be transferred by the defendant no.1 in the name of plaintiff. Relevant clause 'a' reads as under:-

“The immovable property no.3/352 and 3/353 shall be transferred by the first party in the name of the second party after the releasing of the husband of the first party from prison. ”

9. In the compromise deed, the defendant no.1 is the first party and plaintiff is the second party. From the above, it can be safely culled out that compromise was arrived at between the plaintiff and defendant no.1 vide compromise deed dated 20th May, 2011; whereby defendant no.1 had agreed to transfer the immovable properties bearing no.3/352 and 3/353 in the name of plaintiff. Documents executed by the defendant no.1 in favour of the plaintiff, as placed on record, makes it clear that compromise entered into between the plaintiff and defendant no.1 was even acted upon, inasmuch as, the same was accepted by the learned Single Judge in revision petition no.48/2011 while passing order dated 2nd June, 2011 whereby offence was compounded and the defendant no.2 was released. Having derived benefit therefrom, defendant no.1 cannot be permitted to wriggle out from the settlement which was accepted by the court and has even been acted upon.

10. Be that as it may, admission can be safely culled out that plaintiff has better title in respect of the properties bearing no.3/352 and 3/353, Khichri Pur, Delhi and is entitled to possession thereof.

11. Admission on the part of defendants can further be culled out from the reply filed by the defendants to the contempt case no.44/2012 wherein defendants have admitted in para 6 that the defendant no.1 had already transferred the properties in favour of the plaintiff. Defendants have stated that they were always ready to hand over the possession but plaintiff never approached the defendants to take possession. Relevant para 6 reads as under:-

“Regarding possession, it is submitted that respondents have always been ready to hand over the possession but the petitioner never approached the respondents to take possession. The original documents are already with the petitioner. The balance payment mentioned in compromise deed was paid by the respondent no.1 to the petitioner at the time of execution of documents for transfer of properties in favour of petitioner.”

12. In view of the above unqualified admissions, as culled out from the pleadings as well as documents on record, entitles the plaintiff to the possession of the aforesaid properties. Accordingly, a decree of possession

is passed in favour of the plaintiff and against the defendants in respect of the suit properties, that is, properties bearing nos.3/352 and 3/353, Khichri Pur, Delhi as shown in the site plan. After taking possession, plaintiff may raise a partition wall, in accordance with law.

13. As regards other reliefs are concerned same have not been pressed by the plaintiff, who is present in Court. No order as to cost.

14. Decree sheet be drawn.

15. Suit is disposed of.

A.K. PATHAK, J.

SEPTEMBER 02, 2015

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