

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **R.S.A. No.171/2015 & C.M. No.8110/2015**

Decided on : 29th June, 2015

SUNIL KUMAR

..... Appellant

Through: Mr. Sudhir Naagar & Mr. G.P. Sah,
Advocates.

Versus

SATISH KUMAR WANCHOO

..... Respondent

Through: Counsel for the respondent.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal filed by the appellant against the judgment dated 19.2.2015 passed by Sh. Kuldeep Narayan, the learned Additional District Judge, Shahdara District, Karkardooma Courts, Delhi in R.C.A. No.65/2014 titled *Sunil Kumar vs. Satish Kumar Wanchoo*.

2. Before dealing with the submissions made by the learned counsel for the appellant, it may be pertinent here to give brief facts of the case. The respondent/plaintiff, Satish Kumar Wanchoo, is the owner and landlord of Flat No.E-01, Indraprastha Apartments, I.P. Extension,

Patparganj, Delhi-92. His case was that he had let out the aforesaid flat to the present appellant/tenant, Sunil Kumar, on a lease of 11 months starting from 1.4.2010 on a monthly rent of Rs.16,000/-. The lease deed was stated to have been executed on 18.3.2010. On expiry, the aforesaid lease was renewed by a fresh lease deed for a period of 11 months; last lease deed having been executed on 29.6.2012 for a period of 1.5.2012 to 31.3.2013 at an enhanced rent of Rs.19,350/-. It has been alleged that after termination of tenancy on 31.3.2013, by efflux of time the appellant/tenant was asked to vacate the premises, however, he did not do so. A letter was sent to the appellant/defendant on 4.4.2013, which was duly served upon him. Yet another letter was served on the appellant/defendant on 20.6.2013 requesting him to vacate the premises. A legal notice dated 21.8.2013 was also served on the appellant/defendant. Since he did not vacate the premises, consequently, suit for possession was filed against him.

3. The appellant/defendant filed his written statement and admitted that he is a tenant in the suit premises since 2010. It is also admitted by him that lease deed was executed on 18.3.2010 for a period of 11 months;

however, he denied that any other lease deed was executed on 29.6.2012. It was further alleged that on 22.3.2012, the respondent/plaintiff came to the appellant/defendant and asked him to vacate the suit premises, which was sought as the respondent/plaintiff was reportedly selling the flat whereupon the appellant/defendant offered to purchase the flat in question. It is further alleged that pursuant to this discussion, price of Rs.1 crore was fixed for the flat and a sum of Rs.10 lacs was paid as an advance by the appellant/defendant to the respondent/plaintiff; however, no document or even receipt was ever executed in token of having received the money on account of having agreed to sell the flat in question to him by the respondent. It has further been stated that as the aforesaid understanding was arrived at between the appellant/defendant and the respondent/plaintiff, the respondent/plaintiff after some time refused to sell the suit property stating that the price of the flat has increased to Rs.1.5 crores whereupon the appellant/defendant wanted refund of his money. It has been stated that the respondent/plaintiff being short of funds, agreed to reduce the rate of rent from Rs.19,350/- to Rs.2,500/- per month till the time the entire payment is given back to the appellant/defendant.

4. After pleadings of the parties, the respondent/plaintiff filed an application under Order XII Rule 6 CPC seeking judgment on admission. It was urged by the respondent/plaintiff that the appellant/defendant has admitted all the three prerequisites for passing a decree under Order XII Rule 6 CPC for which the application was filed and reply of the appellant/defendant was invited. These three factors were (i) relationship of landlord and tenant, (ii) rate of rent, which was never in dispute, and (iii) the premises under tenancy.

5. So far as the rate of rent is concerned, the appellant/defendant has taken a defence that the rate of rent got reduced from Rs.19,350/- or for that matter from Rs.16,000/- to Rs.2,500/- per month. The answer to seek such a drastic reduction of rent is not far to seek. It is actuated by an ulterior motive that if the rent is alleged to be less than Rs.3,500/- per month then the suit for possession would not lie and such a party would be left to obtain eviction of his tenant under the Rent Act which is one of the most difficult thing to do in Delhi because in that event the landlord has to satisfy the Rent Controller about the existence of a ground for eviction.

5. The trial court on an application under Order XII Rule 6 CPC passed a judgment on the basis of admission as in its view the defence which was taken by the appellant/defendant was on the face of it false and frivolous. The learned trial court also referred to the submission made by the learned counsel for the appellant/defendant that the admission made by the appellant/defendant was not unambiguous or unequivocal. It was the case of the appellant that he was depositing a sum of Rs.2,500/- per month with the court as rentals. The judgments which are sought to be relied upon by the appellant/defendant before this court were also referred to before the trial court, but they were not relied upon as there was a clear cut admission on the part of the appellant/defendant. These judgments are *Himani Alloys Ltd. Vs. Tata Steel Ltd.*; (2011) 15 SCC 273, *Parivar Seva Sansthan vs. Dr. (Mrs.) Veena Kalra & Ors.*; 86 (2000) DLT 817 (DB), *Raj Kumar Chawla vs. M/s. Lucas Indian Services*; AIR 2006 Delhi 266, *Mohan Prasad Jha vs. Shambhu Prasad Singh*; 82 (1999) DLT 281 and *Puran Chand Packaging Industrial Pvt. Ltd. Vs. Smt. Sona Devi*; 2009 (2) Civ. CC 29. The first appellate court accepted the finding of fact returned by the trial court. Feeling aggrieved, the present regular second appeal has been filed.

6. I have heard the learned counsel for the appellant as well as the learned counsel for the respondent.

7. The second appeal is permissible only when a substantial question of law is involved in the matter. Even if the question is not being framed by the appellant, the question is to be framed by the court and only then the matter is to be proceeded.

8. In the instant case, the plea which has been taken by the appellant/defendant is that he had agreed to purchase the flat in question from the respondent/plaintiff on a sum of Rs.1 crore out of which he had paid an advance of Rs.10 lacs for which there is no document in writing. There is no agreement to sell signed between the parties, therefore, *ex facie* this plea of the appellant/defendant has been considered to be unreliable or unworthy of any credence and therefore, has been ignored by the two courts below. In any case the sale and purchase of the flat in question is an independent transaction and cannot forestall the passing of a decree which is based on admissions. This is an independent transaction and the objection which is taken by the appellant/defendant is not an objection which goes to the root of the matter. If at all anything was

agreed to by those persons who own the flat or who had represented the appellant/defendant to purchase the flat, they will face the music but certainly this cannot be a ground for stalling a judgment on the basis of the admission in the instant case which is clear, unambiguous and unequivocal. In any case this is a question of fact and not a question of law much less substantial question of law. So far as the judgments which are relied upon by the appellant are concerned, they are already considered by the two courts below. All these judgments are dealing with the question as to when an admission can be treated to be an unequivocal, unambiguous warranting passing of a decree in the facts of a particular case. An admission whether it is unequivocal and unambiguous is a question of fact which has already been gone into by the two courts below against the appellant.

8. The second appeal, as has been stated, is permissible only when a substantial question of law is involved in the matter which the learned counsel for the appellant has failed to show. Hence, the appeal is without any merit and the same is dismissed.

V.K. SHALI, J.

JUNE 29, 2015/‘AA’