

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

% Judgment delivered on: 15.10.2015

+ RFA 563/2015

NITIN JAIN

....APPELLANT

Versus

GEETA RAHEJA

.....RESPONDENT

ADVOCATES WHO APPEARED IN THIS CASE:

For the Appellant : Mr. Hameed S. Shaikh, Advocate

For the Respondent : Mr. Anuj Kumar, Advocate

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is an appeal which is directed against judgment dated 04.07.2015 passed by the learned Additional District Judge (East), Kakardooma Courts, Delhi (in short, the ADJ).

1.1 By virtue of the impugned judgment and decree, the learned ADJ has partly decreed the suit filed by the respondent / plaintiff, based on an application preferred by her, under Order 12 Rule 6 of the Code of Civil Procedure, 1908 (in short the CPC).

2. The appellant being aggrieved, has preferred the appeal.

3. In order to appreciate the challenge laid to the impugned judgment and decree, the following facts, in so far as, they are necessary, are required to be noticed :

3.1 The respondent / plaintiff in her action has averred that she is the owner and the landlady of the property, described as G-35, Preet Vihar, Delhi-110009, admeasuring 180 sq. yds. comprising of ground floor and partially constructed first floor alongwith terrace (in short the suit property).

3.2 It is averred that this property was let out to the appellant / defendant vide lease agreement dated 11.12.2006 for a period of eleven (11) months. The said period, it is averred, commenced from 01.12.2006 and ended on 31.10.2007. According to the respondent / plaintiff, the suit property was let out at a rent of Rs.10,000/- p.m.

3.3 As per the respondent / plaintiff, the lease tenure was mutually extended and a fresh lease agreement deed dated 01.11.2008 was executed. It is averred that by virtue of the said lease agreement, the lease tenure was extended for a period of eleven (11) months commencing from 01.11.2008, which ended on 30.09.2009.

3.4 It is further averred that the appellant / defendant failed to hand over vacant and peaceful possession of the demised premises, on the expiry of the lease tenure. Consequently, the respondent / plaintiff wrote a letter dated 10.03.2010, requesting the appellant / defendant to vacate the suit property.

3.5 Since the respondent / plaintiff got no response to her entreaties, a legal notice dated 25.01.2011 was served on the appellant / defendant, inter alia, calling upon him to vacate the suit property.

3.6 On account of the failure of the appellant / defendant to hand over the vacant and peaceful possession of the suit property, the respondent / plaintiff was constrained to file a suit, given her immediate need, as her husband, who is a Government servant is, due for retirement in March 2016. It is also

averred by the respondent / plaintiff that since her husband is suffering from a kidney related ailment, they are required to be in Delhi as they would require the assistance of their relatives.

3.7 The appellant / defendant, on the other hand, has filed, I must say, a written statement, which is both garbled and consist of vague pleas, I suspect deliberating so. However, upon a careful perusal of the written statement, what I have been able to glean from the pleadings, is as follows :-

(i). That the execution of the lease deed dated 11.12.2006 is not denied. It is, however, averred that the said lease agreement was not prepared with the consent of the appellant / defendant and as such, the subsequent lease agreement, which is dated 01.11.2008, is fraudulent. This is evident upon a perusal of paragraph 2 of the reply on merits of the written statement.

(ii). The execution of the second lease agreement, dated 01.11.2008, is also not disputed except to the extent of incorporation of a lease tenure of eleven (11) months. The stand taken by the appellant / defendant is that in the draft of the lease agreement, there was no mention of the lease tenure, and that, the respondent / plaintiff slipped in a tenure of eleven (11) months in the final lease agreement, albeit fraudulently. This plea is discernible upon reading paragraph 2 of the preliminary objections and paragraph 3 of the reply on merits of the written statement.

(iii). That appellant / defendant has paid the agreed rent up to October 2013 via account payee cheques which, stand credited to the account of the respondent / plaintiff.

(iv). The appellant / defendant has not been served with any notice of termination of the lease agreement and, in any event, without admitting the

receipt of notice of termination, the termination, as such is illegal and not in accordance with the provisions of the Transfer of Property Act, 1882 (in short the TP Act).

(v). The appellant / defendant has acquired leasehold rights in the suit property in accordance with the provisions of Section 116 of the TP Act by holding over and by payment of rent. Consequently, the suit is liable to be dismissed.

4. A perusal of the pleadings would show that the appellant / defendant has admitted to the following :-

(i). That he was inducted in the suit property by the respondent / plaintiff in the capacity of a tenant.

(ii). That he executed both lease agreements (i.e. lease agreement dated 11.12.2006 and 01.11.2008). In so far as the first lease agreement is concerned, the appellant's / defendant's stand is that it was not prepared with his consent. As regards, the second lease agreement, his stand is that the tenure of eleven (11) months, was in a manner of speech, slipped in, without his knowledge. In other words, the second lease agreement, did not contain or made a reference to any tenure.

(iii). There is no dispute raised though, with regard to the rate of rent.

(iii)(a). The respondent / plaintiff has clearly pleaded in paragraph 2 of the plaint that the suit property was let out at the rate of Rs.10,000/- p.m. There is no denial to this assertion of the respondent / plaintiff in the written statement.

5. Therefore, what emerges on reading of the pleadings filed in the matter is as follows :-

(i). There is acceptance of the relationship of landlord and tenant as between the parties.

(ii). There is acceptance of the fact that the rent of the suit property is more than Rs.3,500/- and hence, the subject matter of the suit falls outside the purview of the Delhi Rent Control Act, 1958.

5.1 Therefore, if the respondent / plaintiff was able to establish her intent to seek possession of the property then, ordinarily, a decree for possession would have to follow.

5.2 The principle in this behalf has been captured by the Supreme Court in the case of *Payal Vision Ltd. Vs. Radhika Choudhary*, (2012) 11 SCC 405, paras 7 and 8 at page 411. For the sake of convenience, the relevant observations are extracted hereafter :-

7. 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 XII Rule 6 of the CPC, which reads as under:

“..7. ...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.”

8. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in *Jeevan Diesels & Electricals Ltd.* (supra) relied upon by the High Court where this Court has observed:

“Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in *Karam Kapahi* (supra) may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation...”

6. The appellant / defendant, in this behalf, has taken the stand that he was neither served with the communication dated 10.03.2010 nor the legal notice

dated 25.01.2011. It is also the stand of the appellant / defendant that payments have been made by him towards rent till October 2013. The respondent/ plaintiff has contended to the contrary.

6.1 However, even if, one were to assume that the legal notice dated 25.01.2011 was not served on the appellant / defendant, the position as it obtains in law today, is that, once a suit is filed for possession, the mere fact that no notice to quit and / or to vacate a demised premises is given will not inhibit a court from passing a decree of possession if, there is no other impediment in law, as the institution of the suit is an expression of the intention to seek possession. [See *Nopany Investment Pvt. Ltd. Vs. Santokh Singh (HUF)*, (2008) 2 SCC 728, para 22, page 740-741]. The relevant observations of the Supreme Court, on this aspect of the matter, are set out hereinbelow :-

“...When the eviction petition was pending before the Additional Rent Controller and the order passed by him under Section 15 of the Act directing the appellant to deposit rent at the rate of Rs. 3500/- was also subsisting, the notice dated 9th of January, 1992 was sent by the respondent to the appellant intimating him that he wished to increase the rent by 10 percent. Subsequent to this notice, another notice dated 31st of March, 1992 was sent by the respondent intimating the appellant that by virtue of the notice dated 9th of January, 1992 and in view of Section 6A of the Act, the rent stood enhanced by 10 percent i.e. from Rs. 3500/- to Rs. 3850/-. It is an admitted position that the tenancy of the appellant was terminated by a further notice dated 16/17th of July, 1992. Subsequent to this, the eviction petition No. 432 of 1984 was withdrawn by the respondent on 20th of August, 1992 and the suit for eviction, out of which the present appeal has arisen, was filed on 6th of February, 1993. That being the factual position, it cannot at all be said that the suit could not be filed without the leave of the Additional Rent Controller when, admittedly, at the time of filing of the said suit,

the eviction petition before the Additional Rent Controller had already been withdrawn nor can it be said that the notice of increase of rent and termination of tenancy could not be given simultaneously, when, in fact, the notice dated 16/17th of July, 1992 was also a notice to quit and the notice intending increase of rent in terms of Section 6A of the Act was earlier in date than the notice dated 16/17th of July, 1992. In any view of the matter, it is well settled that filing of an eviction suit under the general law itself is a notice to quit on the tenant. Therefore, we have no hesitation to hold that no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the respondent to get a decree of eviction against the appellant. This view has also been expressed in the decision of this court in V. Dhanapal Chettiar Vs. Yesodai Ammal [AIR (1979) SC 1745].

(emphasis is mine)

7. Which brings me to the last aspect : as to whether a bald pleading to the effect that rent had been paid till October 2013, should come in the way of the court passing a decree for possession. The pleading is vague as there are no details as to the cheque numbers and dates on which payments were made or that payments were accepted by respondent / plaintiff with an intent to continue or create new tenancy. As a matter of fact, in the reply to the application under Order 12 Rule 6 of the CPC, the appellant / defendant has not even cared to refer to the period(s) for which payments have been made. I had specifically asked the counsel for the appellant /defendant to supply details of payments made, as claimed, till October 2013. The counsel for the appellant /defendant failed to supply any details. As a matter of fact, when the appeal came up for hearing, for the first time, before this court on 21.08.2015, it had been conveyed to the court that the appellant /defendant was only interested in seeking extension of time for vacating the suit property. Notice in the appeal was confined to this aspect of the matter.

However, the counsel for the appellant / defendant after taking two accommodations in the matter i.e. on 11.09.2015 and 12.10.2015, chose to argue the matter. This is how, the matter proceeded on merits.

7.1 Coming back to the aspect of purported payments made by the appellant / defendant, even if, one were to assume in favour of the appellant / defendant that monies were paid after the institution of the suit, those payments could only be categorized as ‘use and occupation charges’ and not ‘rent’ unless he was able to demonstrate to the contrary. This demonstration necessarily would commence with the appellant / defendant in the first instance making a clear and specific pleading in that behalf. The frequency of payments and the quantum of those payments, coupled with an assertion that respondent/ plaintiff accepted it with a view to continue or create a new tenancy, would, at least prima facie, have established that the appellant / defendant had made payments towards rent. On the other hand, the factum of institution of the suit for possession (and I am not referring to the legal notice dated 25.01.2011, which the appellant / defendant says that he has not received) would show that the appellant / defendant was no longer a “tenant holding over”, as contended, but had become a “tenant at sufferance”. Therefore, the appellant / defendant had to give specific details of the payments made, to demonstrate, that they were in the nature of rent, which were accepted to continue or create new tenancy, and not, payment towards use and occupation charges. The mere acceptance of payment of monies does not *ipso facto* create a fresh tenancy, in law. [See ***Gulam Ghaus Vs. Chaudhary***, AIR 1947 Madras 436]. In ***Gulam Ghaus*** the court came to conclusion that the case did not come within the ambit of Section 116 of the T.P. Act despite the fact that the rent had been paid and receipt was

generated in that behalf after the concerned court had directed that possession of the subject property should be handed over.

7.2 Consequently, the contention advanced on behalf of the appellant / defendant that a tenancy by holding over was created, is untenable as it requires a bilateral and a consensual act involving both the landlord and the tenant.

7.3 This apart, reference may also be made to a Division Bench judgement of this court in the case of ***Delhi Jal Board vs Surendra P. Malik (2003) 104 DLT 151***, wherein it observed that mere acceptance of rent, after tenancy has expired by efflux of time, cannot renew or create fresh tenancy. The Division Bench went on to observe, once tenancy had expired by efflux of time under Section 111 of the TP Act, it was not required to be determined by issuance of a notice under Section 106 of the said Act. The relevant observations made in paragraph 12 at page 276 are extracted hereafter:

“.....12. It is no longer a grey area that where a tenancy had otherwise expired by efflux of time but the tenant continued in possession of the premises, mere acceptance of rent by the landlord could neither renew the tenancy nor create a new one. That is so because such subsequent occupation of premises was not in pursuance of any contract, express or implied between the parties....”

7.4 It is important to note, that in ***Delhi Jal Board vs Surendra P. Malik's*** case, the Division Bench was dealing with a property which was outside the purview of the DRC Act.

7.5 The courts are empowered to exercise powers under Order 12 Rule 6 of the CPC to enable a party to obtain speedy judgment at least to the extent

the defendant has admitted its claim. As to what kind of admissions are admissible, one may only replicate with profit the observations of the Supreme Court in *Uttam Singh Duggal and Company Ltd. Vs. United Bank of India, (2000) 7 SCC 120* at page 129 para 17. The relevant observations are extracted hereinbelow :-

“17. ...Learned counsel for the Petitioner contended that admissions referred to in Order XII, Rule 6 CPC should be of the same nature as other admissions referred to in other rule preceding this Rule. Admissions generally arise when a statement is made by a party in any of the modes provided under Sections 18 to 23 of the Evidence Act, 1872. Admissions are of many kinds : they may be considered as being on the record as actual if that is either in the pleadings or in answer to interrogatories or implied from the pleadings by non-traversal. Secondly as between parties by agreement or notice. Since we have considered that admission for passing the judgment is based on pleadings itself it is unnecessary to examine as to what kinds of admissions are covered by Order XII, Rule 6 CPC...”

7.6 The practice of defendants deliberately making vague averments only to ensure that the matter somehow is put to trial is to be deprecated. In this particular case, the trial court, in my view, has correctly noted that despite the fact that the appellant / defendant has taken the plea that the two lease agreements were, in a sense, drawn up without his consent, does not appear to be correct as, there is no plea in the written statement that he ever objected to the contents of the lease agreements. As a matter of fact, the appellant / defendant continued to pay rent both under the lease agreements dated 11.12.2006 as well as 01.11.2008.

7.7 As to the manner in which the court is to proceed in respect of vague and evasive pleadings, is best answered by the observations of a Division Bench of this court in the case of *Vijaya Myne Vs. Satya Bhushan*

Kaura, (2007) 142 DLT 483 (DB), para 12 at page 491-492. For the sake of convenience, the relevant observations are extracted hereafter :-

“..12. ..It is not necessary to burden this judgment by extracting from the aforesaid authoritative pronouncement as the learned Single Judge has accomplished this exercise with prudence and dexterity. Purpose would be to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored...”

(emphasis is mine)

8. Having regard to the above, I am not inclined to interfere with the judgment of the learned ADJ, for reasons given above. The appeal is accordingly, dismissed with costs of Rs.7,500/- to be paid to the respondent / plaintiff, within a period of one week from today.

RAJIV SHAKDHER, J.

OCTOBER 15, 2015

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