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

+ **Date of Decision: 04.12.2015**

% **RSA 417/2015 & C.M. Nos.29313-14/2015**

SHIV KUMAR

..... Appellant

Through: Mr. Anil Sehgal, Mr. Om Prakash and
Mr. Lalit Kumar Khurana, Advocates

versus

SUMIT GULATI

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (OPEN COURT)

1. The present second appeal is directed against the judgment and decree dated 19.10.2015 passed by the learned ADJ-02 (NW), Rohini Courts, Delhi in RCA No.24/2013, whereby the said first appeal preferred by the appellant/defendant has been dismissed and the judgment and decree passed by the Trial Court, namely, CCJ cum ARC (NW) Rohini Courts, Delhi dated 26.03.2012 in Suit No.325/2011 decreeing the suit of the respondent/plaintiff under Order 12 Rule 6 CPC has been upheld.

2. The respondent/plaintiff filed the suit, inter alia, claiming a decree for ejectment/possession in respect of the suit property by claiming that he is the owner and landlord thereof and that the defendant is his tenant.

3. In the written statement filed by the defendant, the defence of the defendant/appellant was, *inter alia*, as follows:

“It is submitted that the plaintiff was owner of the suit property before November 2007. It is submitted that the plaintiff let out the premises on rent. The defendant took the suit premises on rent of Rs.300/- per month excluding water charges and electricity charges.”

4. The defendant also claimed that the parties had entered into an agreement whereunder the defendant agreed to purchase the suit property for a total consideration of Rs.4 lacs. According to the defendant, the defendant claimed that the parties visited the office of one Sh. Surender Kumar Jolly, Advocate at Tis Hazari Courts for preparation of documents, whereafter the agreement was executed. The defendant, however, stated that he is not possessed of the original documents and he has already filed a police complaint in respect of the loss of the said documents. The plaintiff, however, denied entering into any such agreement with the defendant.

5. The plaintiff moved an application under Order 12 Rule 6 CPC for claiming a decree on admission on the basis that the defendant had admitted that he was a tenant before the alleged agreement to sell was entered into. The plaintiff claimed that the defence of the defendant qua the alleged agreement to sell was frivolous and unsubstantiated, as no agreement had been produced.

6. The Trial Court allowed the application under Order 12

Rule 6 CPC by observing, inter alia, as follows:

“It is admitted by the defendant in written statement that he was inducted as a tenant at a monthly rent of Rs.300/- before 2007 but in 2007 the plaintiff sold the property to the defendant for a sum of Rs.4,00,000/- and executed the documents in Tis Hazari Courts in the chamber of Surender Kumar Jolly, Advocate but no such document has been placed on record & the plea taken by the defendant is that he left the original documents in the chamber of some advocate to whom he met in consultation with the present case but the defendant has failed to disclose the name of any such Advocate or his address. The defendant has admitted the execution of rent agreement but rate of rent is different. He is admitting that rate of rent is Rs. 300/- per month. Since there is clear admission regarding rent agreement & the defence taken by the defendant is without any support of the documents.

Plaintiff has cited “Rama Devi Vs. Punam Chand Aggarwal” 2008 (4) Civil Court Cases 701 (Delhi) wherein it is held that “this is well settled that admission need not be made expressly in the pleadings, even on constructive admission the Court can proceed to pass a decree in plaintiff's favour under Order 12 Rule 6 CPC.”

In “Gajender Kumar Loond Vs. Samant Barara” in IA no. 13740/2011 in CS (OS) 1132/2011 it is held that “it is now well-established that admissions are not restricted to pleading. More often than not, contents of the plaint are denied in order to delay proceedings and procrastinate the incidence of liability. Admissions can, therefore, be justly and soundly drawn even from attending circumstances, such as pleadings in other suits or proceedings, or documents exchanged between the parties. In fact, in my opinion, documents constitute the best source of admissions of facts. In the present case, admittedly a license deed was executed by the parties, and the Court need not travel any further. It is bound to treat the contents of such a document as admissions between the parties, and give effect to its contents at the very earliest. Failure to do so would tantamount to encouraging dishonest pleadings. All the

averments put forward by the plaintiff are predicated and are sustainable merely from a reading of this deed itself.”

It is further held that “in the present case, as already stated above, the pleadings do not reveal any dispute as to the material aspects of the lease agreement between the parties. Even otherwise, it stands to reason that the defendant cannot be allowed to continue running its showroom from the posh commercial premises belonging to the plaintiff without payment of rent to the plaintiff. The consistent non-payment of rent over a prolonged period of time by the defendant is bound to lead to financial constraints to the plaintiff.”

“It is further observed that “the provisions of Order XII Rule 6 of the Code of Civil Procedure have vested a wide discretion in the Court to decree the suit to the extent of admissions made by the defendants. Such a power can be exercised by the Court on an examination of the pleadings and other materials appearing on the record.”

Counsel for the plaintiff argued that at the very threshold the defendant has admitted the fact that defendant had taken on lease the suit property & the defendant has not raised any dispute with regard to the execution or admissibility of rent agreement dated 06/01/05 & in such an eventuality, the said agreement is not only admitted but becomes legally binding on both the parties & only the contents of document need to be read. Counsel for the plaintiff further relied upon Chiranjit Lal Mehra & Ors. Vs. Smt. Komal Saroj Mahajan & anr; 121 (2005) DLT 98, AIR 2004 Delhi 248.

Both the authorities are fully applicable in the present case and in view of the admission of the defendant, the suit of the plaintiff is decreed for possession.”

7. The first appeal preferred by the appellant/defendant met the same fate. A perusal of the appellate order shows that there is hardly any discussion on the aspect whether the partial decree passed in favour of the respondent/plaintiff under Order 12 Rule 6 CPC is justified.

8. Counsel for the appellant submits that the approach of the Trial Court as well as the First Appellate Court in dealing with the application under Order 12 Rule 6 was wholly misdirected in law. He submits that the dispute whether the parties had entered into an agreement to sell – as claimed by the appellant/defendant; whether the same was executed in the chamber of Mr. Surender Kumar Jolly, Advocate, and; whether the same was misplaced, as well as the effect of the said agreement to sell on the rights of the parties qua the suit property, were aspects which required the matter to be sent to trial. The present was not a fit case for passing a decree on admission, as the admission of the erstwhile tenancy could not be relied upon in view of the subsequent agreement to sell entered into between the parties, whereunder the appellant/defendant acquired interest in the suit property. Learned counsel submits that if the matter had been sent to trial, the appellant could have cross examined the plaintiff to establish the appellants plea with regard to execution of the agreement to sell.

9. He also places reliance on a recent judgment of the Supreme Court in ***S.M. Arif v. Virender Kumar Bajaj***, C.A. Nos.6106-08/2015 decided on 12.08.2015. In this case as well, the defendant/tenant claimed to have entered into an agreement to purchase the tenanted premises for a consideration of Rs.1.56 crores and to have made advance payment of Rs.82.50 lacs, during the currency of the tenancy. A learned Single Judge of this Court had allowed the application under Order 12 Rule 6 CPC, and the first appeal was also dismissed. The Supreme Court while allowing the appeal of the tenant, inter alia, observed as follows:

“9. The words in Order XII Rule 6 CPC “may” and “make such order...” show that the power under Order XII Rule 6

CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the Court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 CPC. The said rule is an enabling provision which confers discretion on the Court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim. In the suit for eviction filed by the respondent-landlord, appellant-tenant has admitted the relationship of tenancy and the period of lease agreement; but resisted respondent-plaintiff's claim by setting up a defence plea of agreement to sale and that he paid an advance of Rs.82.50 lakhs, which of course is stoutly denied by the respondent-landlord. The appellant-defendant also filed the Suit for Specific Performance, which of course is contested by the respondent-landlord. When such issues arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order XII Rule 6 CPC. 10. Having regard to the stand taken by the parties, in our view, an opportunity has to be afforded to the appellant to put forth his defence and contest the suit and therefore, the matter is to be remitted to the trial court for a fresh hearing, however, subject to the condition that the appellant should pay the arrears of rent at the rate of Rs.44,000/- per month within a period of eight weeks. Further the appellant shall pay Rs.1,00,000/- per month to the respondent-landlord as compensation for use and occupation of the suit premises with effect from 01.08.2015 and the respondent-landlord shall issue necessary receipt/acknowledgment for having received the same. The trial court vide its order dated 30.09.2013 while directing the payment of Rs. 44,000/- per month has stipulated a condition that in the event of the appellant succeeding, the said amount would be adjusted against the balance sale consideration amount under the agreement for sale dated 19.08.2011. Having regard to the said order passed by the trial court, payment of sum of Rs.1,00,000/- per month would also be subject to the

final outcome of the eviction suit as well as the suit for specific performance.”

10. Having perused the judgment of the Trial Court as well as the First Appellate Court, it appears to this Court that the approach of the two courts below is not in accord with the law inasmuch, as, since the appellant/defendant had claimed to have entered into an agreement to sell, the issue whether the said agreement to sell had been entered into, or not, could not have been skirted.

11. However, the difficulty of the appellant does not stop here. Let us assume that the parties did enter into the alleged agreement to sell, as claimed by the appellant/ defendant. Then the next question that arises is, as to what is the effect of the same on the rights of the parties qua the suit property, and what is the status of their relationship qua the suit property. The agreement to sell is claimed to have been entered into in the year November 2007 – though no specific date has been furnished. The Registration and Other Related Laws (Amendment) Act, 2001 was enforced with effect from 31.09.2001, whereby the Registration Act, 1908; Transfer of Property Act, 1882 and the Indian Stamp Act, 1899 were amended. Sub-section (1)(A) was inserted in Section 17 of the Registration Act, which reads as follows:

“(IA) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53A of the Transfer of property Act, 1882 shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then, they shall have no effect for the purposes of the said section 53A”.

12. Section 49 of the Registration Act was also amended in tune with Section 17. Other amendments were also carried out in the said Act. Similarly, Section 53A of the Transfer of Property Act was amended in tandem with the amendment of the Registration Act and the Indian Stamp Act was also, accordingly, amended. The effect of these amendments was that post amendment of the law, the agreement to sell – whereunder possession was sought to be delivered, could be entered only by a duly stamped and registered instrument. If not so executed, the agreement purchaser could not claim the protection afforded by Section 53A of the Transfer of Property Act.

13. In the present case, it is not even the case of the appellant that the alleged agreement to sell entered into between the parties in November 2007, was registered. The effect of non-registration of the agreement to sell, even if the same is presumed to have been so executed – as claimed by the appellant/defendant (which is disputed by the respondent/plaintiff), is that the appellant/defendant cannot claim to have come into possession of the suit property under the alleged agreement, and cannot claim to be in possession in part performance of the alleged agreement to sell. He, thus, cannot claim protection under Section 53A of the Transfer of Property Act.

14. The status of the appellants possession of the suit property continues to be as that of a tenant. This being the position, it cannot be said that the relationship between the parties – as that of landlord and tenant, came to an end when the alleged agreement to sell is claimed to have been executed. The rights and obligations of the parties continued to be governed by the said relationship of landlord and tenant, even post the alleged execution of

the agreement to sell. Thus, the respondent/ plaintiff was entitled to claim the relief of possession on the premise that he is the landlord of the appellant/ plaintiff in the suit property and that the tenancy of the appellant stood terminated. It is not even the case of the appellant that the tenancy of the appellant did not stand terminated. No issue of maintainability of the suit in the light of the bar contained in Section 50 of the Delhi Rent Control Act, 1958 arises in the present case. Consequently, the appellant does not have a valid grievance with the passing of a partial decree for ejectment on the basis of admission that the relationship of the parties qua the suit property was that of landlord and tenant.

15. The aforesaid aspect of amendment of the law has not been noticed by the courts below, and does not even appear to have been brought to the notice of the Supreme Court when it decided *S.M. Arif* (supra). The aforesaid aspect is a purely legal issue, which arises on the admitted factual position disclosed on record. The legal position obtaining post the aforesaid amendment in the law leaves no triable issue to be decided by the court and, consequently, the present is a fit case for pronouncing judgment and passing a decree for ejectment in favour of the respondent/landlord under Order 15 Rule 1 CPC read with Order 12 Rule 6 CPC.

16. Accordingly, I find no merit in the present second appeal and the same is dismissed.

VIPIN SANGHI, J

DECEMBER 04, 2015

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