

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1364 OF 2015
with
CAF/4281/2015
WITH
CAF/225/2016

Shri Ranbeer Singh Rawat & anr. ... Applicants
Vs.
Smt.Archana Bhalla & anr. ... Respondents

Mr.V.G. Deshmukh for the Appellant
Mr.J.S. Kini i/b Suresh Dubey for Respondent No.1

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **5th FEBRUARY, 2016**

P.C.:

1. Heard. Admit. By the consent of the parties, appeal called out and heard finally at the stage of admission.

2. This First Appeal is directed against the judgment and order dated 4.11.2015 passed by the City Civil Court, Greater Mumbai in S.C. Suit No.3461 of 2014. The respondent No.1 is the original plaintiff who filed the suit for eviction and injunction against the present appellants. The plaintiff is a co-owner of the suit premises i.e., Survey No.1000 (part) corresponding to CTS 1110/1 to 1110/18, Devi Dayal road, Mulund (W), Mumbai. The appellant No.1, who was the original defendant No.1, was employed by the plaintiff as a security guard, who was brought from Delhi. He was in the employment of respondent No.1 i.e., the plaintiff. However, his behaviour was found rude and arrogant and accordingly his services

were not found satisfactory. He was employed initially in Delhi and transferred to Mumbai in and around in the 2013. However, he started fighting with the other staff members and, therefore, the plaintiff terminated his services on 18.8.2014. He being a security guard, he was given accommodation on the suit premises and he was, therefore, asked to vacate the same. However, he remained on the suit premises and hence, the suit was filed for eviction. The appellants appeared in the matter and defended the suit by filing written statement. In the written statement, the appellants admitted that the appellant No.1 was earlier serving in Delhi and was in employment of the plaintiff. The plaintiff transferred him to Mumbai and he was working in the office of the plaintiff as a security guard. He also admitted that the plaintiff terminated his services. However, he claimed that his services were terminated arbitrarily and when he was brought from Delhi to Mumbai, he was promised an ownership flat and also to provide a job. Therefore, it was contended that the plaintiff's action of termination of services is without any cause and hence, the suit filed is illegal. During the pendency of the suit, a Motion was taken out by the plaintiff under Order 12 Rule 6 of Civil Procedure Code that on the basis of the admission, the suit can be decided. The Motion was contested by the defendants i.e., the appellants, on the ground that if they would not have admitted the contents in the plaint then the application could not have been taken out under Order 12 Rule 6 of CPC.

The learned Judge of the trial Court formulated the points that whether a case is made out to pass judgment under Order 12 Rule 6 of the CPC and answered it in affirmative. As the Notice of Motion was allowed and the suit was decreed, the defendants were declared as trespassers and they were directed to vacate and hand over the suit premises i.e., one room admeasurign 150 sq.ft. Hence, this appeal.

3. The learned Counsel for the Appellants has submitted that there was no ground for the trial Court to entertain the Notice of Motion under Order 12 Rule 6 of the CPC as no case was made out by the plaintiff. He submitted that the admissions which are construed as ambiguous or unambiguous, cannot be said as specific admissions. It is submitted that these admissions were subsequently denied in the reply given to the Motion and, therefore, the learned Judge has committed an error in passing the decree under Order 12 Rule 6 of the CPC.

4. In support of his submissions, he relied on the judgment in the case of **Shantez vs. Applause Bhansali Films Pvt. Ltd.**¹

5. Mr.Kini, the learned Counsel appearing for the respondents, opposed the contentions raised and the submissions made by the learned Counsel for the appellants.

1 2009 (4) Bom.CR 799

6. Perused the record so also the pleadings of the parties and the order passed by the learned Judge. It appears from the statements made in the written statement that the appellants, the original defendants, have admitted that the appellant No.1 was in the employment of the plaintiff. He was staying at Delhi and brought to Mumbai by the plaintiff and was working as a security guard. He was occupying one room i.e., the suit premises, which was given by the plaintiff. Though he has given challenge to the termination itself, the fact of termination of service is admitted. Thus, all these admissions are to be considered as not only unambiguous but specific admissions. He has also admitted that the suit premises i.e., one room admeasuring 150 sq.ft. was given to him by the original plaintiff, to occupy as a condition of service with the plaintiff and as his service is terminated, his stay in the said room or on the suit premises is illegal and he has no right to occupy the room or to stay over the suit premises.

7. This suit is decreed at the stage of Notice of Motion which was taken out under Order 12 Rule 6 of the CPC. Order 12 Rule 6 reads thus:

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

8. Considering the statements made by the appellants i.e., the original defendants, in their written statement, and the admissions given therein in respect of facts, in my view, it is a correct case to be covered under Order 12 Rule 6 of the CPC.

9. In the case of **Shantez (supra)**, the Division Bench of this Court has held that there is a fine distinction between unambiguous and specific admissions on one hand and vague averments of facts which if proved, could even tantamount to an admission on the part of a party to the suit. In the present case, there are no such vague averments of facts; there are clear specific admissions of facts and thus, the ratio laid down in the case of **Shantez (supra)** is rather helpful to the respondents.

10. In view of this, nothing remains in the appeal and it is summarily dismissed.

11. At this stage, the learned Counsel for the appellants prays for some time to vacate the premises as the children of the appellants are studying. Mr.Kini opposes the application on the ground that there are quarrels between the appellants and the security personnel. Considering the submissions of the learned Counsel for the appellants, time to vacate the premises is granted till 10th May, 2016, however, subject to the appellants furnishing usual undertaking to the satisfaction of the Registrar General of

this Court, within a period of two weeks from today.

12. In view of the dismissal of the appeal, nothing survives in the Civil Applications and the same are disposed of accordingly.

(MRIDULA BHATKAR, J.)