

\$~8

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

RSA 55/2016

BHAWANJEET SINGH

..... Appellant

Through: None.

versus

DIWAN SINGH

..... Respondent

Through: Mr. Anuj Arora, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

%

11.07.2016

1. This matter is taken up today in view of Notification No.1078/G-4/Genl./DHC dated 6.7.2016.
2. Appearance of the counsel for the appellant has been awaited for more than 45 minutes. Though, this second appeal was fixed as per an early hearing application for changing the date from 11.7.2016 to 8.7.2016, today, however it is the date fixed i.e. 11.7.2016. There is therefore no reason for the counsel for the appellant not to appear in spite of the Court waiting for him for a considerable period of time. Obviously, since the appellant/defendant/tenant has a stay order in his favour against eviction hence possibly there is convenient non-appearance.
3. This Regular Second Appeal is filed against the concurrent

judgments of the courts below; of the trial Court dated 10.8.2015 and the First Appellant Court dated 11.12.2015; by which the suit for possession filed by the respondent/landlord against the appellant/defendant/tenant has been decreed.

4. In the city of New Delhi once the rent is beyond Rs.3,500/- per month then a tenant has no protection under the Delhi Rent Control Act. Once, the tenanted premises are outside the area of operation of the Delhi Rent Control Act a tenant can seek protection against eviction only if there is a registered lease deed for a specific period and the tenant is sought to be illegally evicted within the period specified in the registered lease agreement. Once, rent is above Rs.3,500/- per month and there is no registered lease agreement or the period of lease agreement has expired, an owner/landlord is entitled to possession of tenanted premises on the tenancy of the tenant being terminated. Even on the aspect of termination of tenancy, it has been held in different judgments of this Court that any issue as to non-service of notice under Section 106 of the Transfer of Property Act is irrelevant, inasmuch as, service of summons in the suit can be taken as notice under Section 106 of the Transfer of Property Act.

5. Both the courts below have exhaustively dealt with the existence of admissions entitling the respondent/plaintiff to a decree for possession under Order 12 Rule 6 CPC, and the relevant paragraphs in this regard of the judgment of the First Appellate Court are as under:-

“8. Repelling the contention of the defendant that he was not inducted in the suit property as tenant by the plaintiff and

further that the lease deed dated 31.08.2010 and subsequent agreement dated 27.08.2012 were got signed from him by the plaintiff fraudulently, Id. Trial Court observed in para 7 of the impugned judgment as under:-

“It is apparent from the Written Statement that the defendant has explicitly not admitted to the existence of a landlord tenant relationship with the plaintiff. However, in the whole body of the written statement, the defendant has alleged that he has been regularly paying rent to the plaintiff on all occasions. The defendant has claimed that the rent agreement dated 31.08.2010, as relied upon by the plaintiff was got signed by him by practicing fraud on the pretext of execution of a General Power of Attorney and some other documents. The plaintiff has also propounded another agreement dated 27.08.2012, by which he claimed that the defendant had agreed to vacate the suit property by 14.02.2013. The execution of this agreement dated 27.08.2012 is again not disputed by the defendant, but it is his plea that his signatures on the said agreement were also taken by the plaintiff by practicing fraud. It is noticed that the rent agreement dated 31.08.2010 is a registered document which even bears the photograph of the plaintiff as well as the defendant. It is common knowledge that a registered document carries the presumption of genuineness, unless otherwise proved. The execution of this rent agreement dated

31.08.2010 has not been disputed by the defendant, but he has come up with a plea that his signatures were taken on the pretext of executing some other documents. The defendant has however, remained silent and not explained as to when the said fraud was revealed to him. The defendant has reportedly not taken any steps till today for cancellation of the fraudulent documents or for making the plaintiff criminally liable for his alleged acts of forgery. In such circumstances, it appears that the defence is sham. It is observed that as per the initial registered rent agreement dated 31.8.2010, the tenancy was to continue for a period of three years w.e.f. 15.8.2010 till 14.8.2013, but as per the plaintiff this agreement was followed by another agreement executed by the defendant on 04.09.2012 (agreement dated 27.08.2012) whereby he agreed to vacate the property by 14.02.2013. This agreement dated 27.08.2012, attested on 04.09.2012 has also been assailed upon claiming that signatures of the defendant were obtained on the same by forgery. Be that as it may, it is not the case of the defendant that he is residing in the suit property in his own right of being the owner thereof. Instead he has admitted that he is residing in the property as a tenant. Since, the defendant has denied that the plaintiff is the landlord of the property, it was upon the defendant to state as to who his landlord was. His pleadings are

however silent in this respect. Further, the defendant has denied that the plaintiff is the owner of the suit property but he has not averred as to who the actual owner is. He has not pleaded as to who has placed him in possession of the suit property but he has merely stated that he is a tenant in the property since the year 2006 at the rate of rent of Rs.5,500/- per month. While replying to the allegations levelled against him that he was irregular in payment of rent, the defendant has claimed that he had been regularly paying rent to the plaintiff and had never defaulted in performing his part of the agreement. The defendant has claimed in paragraph no. 4 of the preliminary objections of his Written Statement that it was the plaintiff who had not performed his part of the agreement. In such a case, the defendant cannot be allowed to blow hot and cold in the same breath. On the one hand, the defendant is admitting the various agreements executed by him by complaining that it is the plaintiff who is the defaulting party, but on the other hand, he is denying that the agreement were validly executed with his free consent.”

9. Ld. counsel for the defendant has laid much stress on a copy of rent receipt dated 15.11.2006, on the basis of which, it is submitted that Devender Singh, elder son of the plaintiff inducted the defendant in the suit property as his tenant. Even if mere photocopy of a rent receipt dated 15.11.2006 indicating

payment of rent @ Rs.5,500/- per month for the period 15.11.2006 to 14.12.2006 is believed to have been issued by one Devender Singh, how Devender Singh can be said to be owner or landlord qua the suit property particularly in absence of any documents of creation of lease or payment of rent by defendant to Devender Singh for a long period i.e. from 2006 to 2010. A solitary photocopy of alleged rent receipt dated 15.11.2006 is not enough to disprove claim of the plaintiff in view of registered lease deed dated 31.08.2010 admittedly executed between the parties and admitted regular payment of rent by the defendant to the plaintiff. The lease deed dated 31.08.2010 is registered and subsequent agreement dated 27.08.2012 is also admittedly signed by the defendant. Defendant has simply stated that his signatures were obtained by the plaintiff fraudulently. The Id. Trial Court has rightly observed that defendant has not disclosed as to when and how the alleged fraud came to his knowledge and why he did not take any steps till date for cancellation of the fraudulent documents or initiated any criminal proceedings against the plaintiff. It is difficult to believe that the defendant could have been duped twice by the plaintiff.

10. The defendant in his written statement has contended in para 2 of page 1 that he has been “paying agreed rent regularly” and in para 4 of page 2, it is alleged that “plaintiff has breached the agreement conditions”, which implies that the defendant admits existence of an agreement between the parties violation

whereof is alleged on the part of the plaintiff.

11. Defendant's submission as made in the written statement are relevant indicating that he treated plaintiff as his landlord to whom he paid rent regularly:-

- that "answering defendant has always paid rent on time"
(para 2 of para 4)
- that "plaintiff was paid the remaining amount in cash"
(para 6 of page 7)
- that it is made clear that the said cheque was given on account of rent from 15.10.2010 to 14.12.2010 amounting to Rs.19,000/- and Rs.1,000/- was added as electricity bill and when the same was not honoured the answering defendant took the cheque and paid to the plaintiff in cash (para 7 of page 8)

12. It is alleged by the defendant that he was lured by the plaintiff to sign lease deed dated 31.08.2010 "on the pretext of making power of attorney in favour of the defendant so that he can obtain loan in case he requires". No particulars of any loan are given in the written statement. It is not explained as to what kind of loan, what amount of loan was required from whom and what type of documents were executed. The defendant is absolutely silent about it. As such there is no substance to as allegations with regard to lease deed dated 31.08.2010 and subsequent agreement dated 27.08.2012 having been signed by him under any fraud or allurement.

13. Further, defendant has denied receipt of legal notice dated 06.01.2011. The Ld. Trial Court has rightly observed

that even if the legal notice is not served upon him, the service of summons for settlement of issues of the suit for possession clearly reveals the intention of the plaintiff to terminate tenancy.

XXXX

XXXX

XXXX

20. Summons of the suit can be treated as notice under Section 106 of the Transfer of Property Act, 1882.

In Nopany Investments (P) Ltd. v. Santokh Singh (HUF), 2008 (2) SCC 728, the Hon'ble Supreme Court held that filing of suit is itself a notice to quit on the tenant and therefore, no notice to quit under Section 106 of the Transfer of Property Act is necessary to enable the landlord to get the decree of possession. The observations of the Hon'ble Supreme Court are reproduced hereunder:-

“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.”

21. In Jeevan Diesels & Electricals Ltd. v. M/s Jasbir Singh Chadha (HUF), 182 (2011) DLT 402, the Hon'ble Supreme Court held that even assuming that the notice of termination was not served, the tenancy shall stand terminated on filing of the suit. The relevant portion of the judgment reads as under:-

“7. The second argument that the legal notice dated

15.7.2006 was not received by the Appellant, and consequently the tenancy cannot be said to have been validly terminated, is also an argument without substance and there are many reasons for rejecting this argument. These reasons are as follows:

XXX

(ii) The Hon'ble Supreme Court in the case of Nopany Investments (P) Ltd. v. Santokh Singh (HUF), 2008 (2) SCC 728 has held that the tenancy would stand terminated under general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of Nopany (supra) I hold that even assuming the notice terminating tenancy was not served upon the Appellant (though it has been served and as held by me above) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant.”

22. In Rabinder Nath Saha v. Sushma Jain, 182 (2011) DLT 456, the Hon'ble Apex Court following the decision in Jeevan Diesel (supra) noted that the SLP against the judgment of Jeevan Diesel (supra) was dismissed by the Supreme Court on 7th July, 2011.

23. In Shri Radhakrishan Temple Trust Maithan, Agra vs. M/s Hindco Rotatron Pvt. Ltd., (2012) II AD (Delhi) 429, the Hon'ble Apex Court again examined the scope of amendment to Section 106 of the Transfer of Property Act and held that a suit for possession cannot be dismissed on the ground of invalidity of notice terminating tenancy because the tenant is only required to be given a reasonable time of 15 days to vacate the property.”

6. A reading of the aforesaid paragraphs of the judgment of the First Appellate Court shows that the courts below have rightly considered the issues for suit to be decreed under Order 12 Rule 6, inasmuch as, the appellant admits himself to be a tenant. Appellant/defendant/tenant also admits the rent to be above Rs.3,500/- as he says that he took the tenancy at the rent of Rs.5,500/- in the year 2006. So far as the respondent/plaintiff being the landlord/owner is concerned, the courts below have rightly observed that a general and a vague denial is no denial in the eyes of law, inasmuch as, the appellant/defendant/tenant in many places in the written statement admits paying rent to the respondent/owner/landlord. Also, the appellant/defendant/tenant fails to mention that if respondent/plaintiff is not the owner of the suit property then who else is the owner. I may note that every owner has a right to recover the possession of the property on a tenant's tenancy coming to an end and it is not required for the owner to be a landlord also.

7. The First Appellate Court in paragraph 11 of its judgment has rightly reproduced the admissions to show that the appellant/defendant/tenant has admitted that he paid rent to the respondent/landlord and clearly therefore there is an admission of the respondent/plaintiff being the landlord of the suit premises.

8. In this regard I would also like to mention that even implied admissions can be the basis of decree of a suit under Order 12 Rule 6 CPC as held by the Supreme Court in the judgment titled as ***Charanjit Lal Mehra and Others v. Kamal Saroj Mahajan (Smt.) and Another***

(2005) 11 SCC 279.

9. I would like to note that challenge if now laid by the appellant/tenant to the registered lease deed dated 31.8.2010 would be time barred by Article 59 of the Limitation Act. The same reasoning would apply to any challenge by appellant/tenant to the other documents executed by him.

10. In view of the above, no substantial question of law arises for this Regular Second Appeal to be entertained under Section 100 CPC and the same is hereby dismissed.

VALMIKI J. MEHTA, J

JULY 11, 2016

AK