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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10th August, 2016

+ RFA 572/2016 and CM Nos. 28968-28969/2016

RAM KUMAR SHARMA Appellant
Through Mr. Vishal Gera and Mr. Amit Kumar
Gehlot, Advocates

versus

M C GUPTA Respondent
Through Nemo

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present Regular First Appeal under Section 96 read with Order XLI of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') impugns the judgment and decree dated 9th May, 2016 passed by the learned ADJ, Karkardooma Courts, Delhi in Civil Suit No. 508/15 titled *M.C. Gupta vs. Ram Kumar Sharma* filed by the respondent/plaintiff [respondent herein] for recovery of possession, damages, *pendente lite* and future interest with cost, whereby the application of the respondent under Order XII Rule 6 of the Code was allowed and the appellant/defendant

[appellant herein] was directed to hand over possession of the suit property bearing house no. 135, Ground Floor, Surya Niketan, Delhi, (subject premises) alongwith costs to the respondent. The appellant was further directed to pay damages @ Rs. 18,000/- per month along with 10% interest from the month of May, 2016 till the handing over of the vacant possession of the subject premises.

2. For the purposes of adjudicating the present appeal, it would be relevant to elaborate on certain admitted facts in the said Suit No. 508/15 ('said Suit'). They are as follows:-

(i) The respondent/landlord instituted the said Suit for recovery of possession, damages and *pendente lite* and future interest as well as costs against the appellant.

(ii) The averments made by the respondent in the said Suit was that the subject premises had been leased out to the appellant, by way of a registered Lease Deed dated 13th July, 2007 and the rental for which, at the time of institution of the suit, was Rs. 32,000/- per month in all, out of which a sum of Rs. 18,000/- per month was paid by cheque and the balance amount of Rs. 14,000/- per month was paid by cash.

(iii) The respondent further averred in the said Suit that the said tenancy had been duly terminated by a notice in accordance with Section 106 of the Transfer of Property Act, 1882.

(iv) The respondent prayed that the said Suit ought to be decreed in terms of an application under Order XII Rule 6 of the Code, in view of the clear and unambiguous admissions on behalf of the appellants as follows:-

- a) Admission qua the existence of the relationship of landlord and tenant between the respondent and the appellant herein by virtue of a registered Lease Deed dated 3rd July, 2007;
- b) Admission on behalf of the appellant that the subject premises was let out for a residential purpose;
- c) Admission that after the initial term of lease, the same had been extended at the request of the appellant at an enhanced rate of rent;
- d) Admission of receipt of service of notice under Section 106 of the Transfer of Property Act, 1882, in terms of the meaning of the provision of Section 114 of the Indian Evidence Act, 1872; and
- e) Admission of payment of Rs. 18,000/- per month by cheque as rent for the use and occupation of the subject premises.

3. At this juncture, it would be relevant to point out that on a specific query from this Court, it has been admitted on behalf of the appellant that:-

(i) No reply, whatsoever, was filed on behalf of the respondent to the application under Order XII Rule 6 of the Code in the said Suit, denying the admissions asserted to have been made on his behalf, in his written statement and at the bar; and

(ii) The appellant had last paid rent @ Rs. 18,000/- per month by cheque.

4. In the backdrop of the afore-stated factual matrix, the learned ADJ arrived at the following findings, which are extracted hereinbelow:-

“3. The defendant appeared on being summoned by the court and filed written statement denying other facts, except, admitting to the extent that the defendant has already been paying the rent of the said premises @ Rs. 18,000/- per month through cheque. The plaintiff has also stated that the plaintiff is not entitled to claim any damages, pendent lite and future interests and cost of suit etc.

4. In terms of admission of the defendant, the plaintiff filed the present application under Order XII Rule 6 of CPC read with Section 151 of the CPC for passing the judgment and decree regarding possession of the suit property.

5. From the perusal of the written statement as well as defence put forth by the defendant it becomes crystal clear

that the defendant admitted certain facts which are not required to be proved by way of evidence.

6. Defendant admitted the existence of relationship between the plaintiff and defendant as landlord and tenant respectively, by virtue of registered Lease/Rent Agreement dated 13th July, 2007, and also, admitted payment though cheque of Rs. 18,000/- (Rupees Eighteen Thousand only) to the plaintiff as rent.

7. Arguments were heard on behalf of the parties. Counsel for the plaintiff submitted that the plaintiff is an old man above 80 years and his wife is suffering from various ailments including cardiac disease. The plaintiff require the suit property for his bona fide need to keep his daughter and her children with him to look after the old couple during the fag end of their life. Counsel for the defendant submits that the defendant's children are studying in nearby school, hence, the defendant may be allowed to reside in the suit property.”

5. Based on the findings extracted hereinabove, the learned ADJ came to a conclusion that the respondent had managed to establish the three essential ingredients requisite to prove in a suit for possession, namely, (a) there exists a landlord tenant relationship between the appellant and respondent; (b) rent of the premises is more than Rs.3500/- so as to exclude the applicability of Section 50 of the Delhi Rent Control Act; and (c) termination of tenancy under Section 106 of the Transfer of Property Act, 1882.

6. In view of the foregoing and after affording the appellant herein, an opportunity to address the arguments on the application under Order XII Rule 6 of the Code and in keeping with the decisions of *Jatinder Nath Gupta vs. STC of India MANU/DE/1869/2012*; *Atma Ram Properties Pvt. Ltd. vs. Pal Properties Pvt. and Ors. 2002 (62) DRJ 623*; *Punjab National Bank vs. Virendra Prakash & Anr. 188 (2012) DLT 48*; and *Sky Land International Pvt. Ltd. vs. Kavita P. Lalwani 191 (2012) DLT 594*, the learned ADJ, in paragraph 9 of the judgment dated 9th May, 2016, observed thus:-

“9. xxxx

The legal position thus emerges that a decree on admission under Order 12 Rule 6 CPC can be passed where there is a clear, unambiguous and unequivocal admission made by one party of the case of the other party. However, no such straight jacket formula can be adopted. Each case has to be viewed in its own facts. The admission can be inferred from the pleadings, documents placed on record or otherwise. Wherever there is a clear admission of facts of which it is impossible for the party making such admission to succeed, a judgment can be passed.”

7. In view thereof, by way of the judgment and decree impugned in the present appeal dated 9th May, 2016, the learned ADJ disposed of the said Suit No. 508/15, in the following terms:-

“12. It is apparently clear that there is clear and unambiguous admission on the part of defendant. Hence, in view of the clear, unequivocal, unambiguous and unconditional admission of the defendant in its written statement, the plaintiff is entitled to a decree of possession in respect of the suit property bearing house no. 135, Ground Floor, Surya Niketan, Delhi, alongwith costs of the suit. Counsel for defendant has submitted during arguments that defendant has paid rent @ Rs. 18,000/- till April, 2016, so, the plaintiff is only entitled for damages @ Rs. 18,000/- pm along with 10% interest from the month of May till handing over the possession of the suit property.”

8. At this juncture, it would be relevant to consider the provisions of Order XII Rule 6 of the Code and Section 58 of the Indian Evidence Act, 1872, which reads as follows:-

“ORDER XII (ADMISSIONS)

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.”

“Section 58 of the Indian Evidence Act, 1872

58. Facts admitted need not be proved —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before

the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.”

9. A conjoint reading of the above provisions leads to one inescapable conclusion that where admissions of facts have been made by a party to a proceeding either in his pleadings or otherwise, whether orally or in writing, the Court can, on an application under the provisions of Order XII Rule 6 of the Code, without waiting for the determination of any other issues that may arise in the proceeding, pronounce a judgment on admissions and direct the drawing up of a decree, as a consequence thereof.

10. It is also clear that the facts which are not denied or are admitted by parties in their pleadings or otherwise need not be proved by the party asserting those facts.

11. In ***Raveesh Chand Jain vs. Raj Rani Jain*** reported as **(2015) 8 SCC 428**, the Hon’ble Supreme Court has made the following observation with regard to the scope and meaning of Order XII Rule 6 of the Code, in paragraphs 8 and 9 of the report, as follows:-

“8. In order to appreciate the submission made by the learned senior counsel we would like to quote Order XII Rule 6 CPC, which reads as under:-

"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 an 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."

The bare perusal of the aforesaid provision makes it clear that it confers wide discretion on the court to pass a judgment at any stage of the suit on the basis of admission of facts made in the pleading or otherwise without waiting for the determination of any other question arose between the parties. Since the Rule permits the passing of judgment at any stage without waiting for determination of other question, it follows that there can be more than one decree that may be passed at different stages of the same suit. The principle behind Order XII Rule 6 is to give the plaintiff a right to speedy judgment so that either party may get rid of the rival claims which are not in controversy.

9. The provision of Order XII Rule 6 has been discussed by this Court in the case of *Karam Kapahi and Others vs. Lal Chand Public Charitale Trust and Another*, (2010) 4 SCC 753, wherein this Court observed:- (SCC pp 765-766, paras 39-42)

"39. In the 54th Law Commission Report, an amendment was suggested to enable the court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Judges to use it "ex debito justitiae", a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment.

40. If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by "pleading or otherwise in writing" but in Order 12 Rule 6 the expression "or otherwise" is much wider in view of the words used therein, namely: "admission of fact ... either in the pleading or otherwise, whether orally or in writing".

41. Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see *Charanjit Lal Mehra v. Kamal Saroj Mahajan*, SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see *Mullas's Commentary on the Code*, 16th Edn., Vol. II, p. 2177).

42. In *Uttam Singh Duggal & Co. Ltd. v. United Bank of India* this Court, while construing this provision, held that the Court should not unduly

narrow down its application as the object is to enable a party to obtain speedy judgment."

12. In *Uttam Singh Duggal & Co. Ltd. vs. United Bank of India* reported as (2000) 7 SCC 120, the Hon'ble Supreme Court, has in paragraphs 12 and 13 of the report, observed as follows:-

“12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled”. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.

13. The next contention canvassed is that the resolutions or minutes of the meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent Bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such

statement is brought before the court showing admission of liability by an application filed under Order 12 Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the court, we do not think the trial court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors' meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made in dispute, and the court had a duty to decide the same and grant a decree, we think this approach is unexceptionable.”

13. From a conspectus of the above-cited decisions, the following legal propositions can be culled out:-

(i) The object of the provision under Order XII Rule 6 of the Code is to enable a party to obtain a speedy judgment.

(ii) When an application under Order XII Rule 6 of the Code is made, the other side has to be given sufficient opportunity to explain the admissions.

After hearing counsel on behalf of the applicant on the application under Order XII Rule 6 of the Code and if the trial court does not accept the explanation offered by the other side, it can exercise its powers to render a

judgment based on admissions, when there are clear and unambiguous admissions.

(iii) This power under Order XII Rule 6 of the Code to render a judgment on admissions is discretionary and not mandatory. A judgment on admissions can be passed at any stage of the suit, without waiting for the determination of any other questions that might have arisen between the parties.

14. I have heard counsel appearing on behalf of the appellant and gone through the material on record. It is observed that the appellant, in his written statement filed in the said suit, admitted the following facts:

- a) The appellant admitted the existence of a landlord-tenant relationship between the respondent and appellant respectively.
- b) The appellant further admitted that an amount of Rs. 18,000/- was paid by him to the respondent, through cheque, as rent with respect to the said tenancy.
- c) The appellant has admitted the fact regarding the termination of the said tenancy.

15. It is also pertinent to observe that the appellant filed no reply to the application filed by the respondent under Order XII Rule 6 of the Code, thus,

there was no specific denial by the appellant to the facts averred in the said application.

16. In view of the foregoing discussion and after hearing learned counsel appearing on behalf of the appellant, in my view, there is sufficient evidence on record to support the conclusion arrived at by the trial Court, that there is a clear and unambiguous admission on part of the appellant in his written statement insofar as the aforesaid facts are concerned.

17. In my opinion, in the facts and circumstances of the case, the impugned judgment and decree dated 9th May, 2016 does not warrant any interference by this Court in an appeal and the same is accordingly confirmed.

18. The appeal and the applications are devoid of any merit and are hereby dismissed.

19. The registry is directed to notify the concerned Court below *qua* the dismissal of the present appeal.

SIDDHARTH MRIDUL, J

AUGUST 10, 2016

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