

*

HIGH COURT OF DELHI AT NEW DELHI

+

R.S.A. No.40/2015

Decided on : 28th April, 2016

GOVT. OF MADHYA PRADESH & ANR. Appellants

Through: Mr. B.P. Singh, Advocate.

Versus

CHARANPREET KAUR & ORS. Respondents

Through: Mr. J.P. Sengh, Senior Advocate with
Ms. Zubeda Begum, Ms. Vanesa Singh &
Ms. Sana Ansari, Advocates.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI

V.K. SHALI, J.

1. This is a regular second appeal filed by the appellants against the impugned order and judgment dated 27.11.2014 passed by the learned ADJ-06, South District, New Delhi wherein the first appeal filed by the appellant was dismissed and the order of learned Civil Judge, South dated 30.9.2014 which partly decreed the suit filed by the respondents/plaintiffs under Order XII Rule 6 CPC was upheld.

2. Before dealing with the contention of the appellants in present appeal to see as to whether it raises any substantial question of law or not, it would be pertinent here to give a brief background of the case.

3. The respondent/plaintiff had filed a suit for possession, *mesne* profits and future damages @ Rs.95,000/- per month with effect from 1.1.2005 till the delivery of possession, against the appellants in respect of suit premises bearing No.L-26, NDSE Part-II, New Delhi which was rented out to Appellant on a monthly rent of Rs.3,000/- per month by Late Rajinder Singh in January, 1971. It was stated in the plaint that Rajinder Singh had expired on 3.6.1990 and suit premises were transferred in the names of respondents/plaintiffs by virtue of a registered will dated 14.5.1987. The respondent No.1 is the daughter-in-law of deceased/owner/landlord Rajinder Singh and respondent Nos.2 & 3 are his grandsons. Thereafter, the power of attorney holder of respondents/plaintiffs, namely, Lt. Col. R.S. Sidhu requested the appellants to increase the rent of the suit premises. Subsequent to which the Finance Department of Government of Madhya Pradesh, the appellant herein, informed the respondents vide letter dated 15.05.2001 that the rent was increased by 15% every three years starting from 27.1.1990.

4. The said enhanced rent was paid till the month of July, 2004. It is not in dispute that as a consequence of this enhancement, the last rent was paid by the appellant @ Rs.6,034/- per month. The respondents sent a legal notice dated 23.11.2004 terminating the tenancy of the appellants and demanding vacant possession of the suit premises on or before 31.12.2004. The appellant failed to deliver the possession which lead to filing of a suit for possession, *mesne* profits bearing No.20/2005 (new number 717/2012) in the court of Ld. ADJ, Tis Hazari Courts.

5. The appellants filed their written statement and took an objection that no notice under Section 80 CPC was served apart from contesting the matter on merits. Thereafter, the respondents sent a legal notice under Section 80 CPC, dated 23.8.2011, and said notice was duly served on appellant 6.9.2011 pursuant to which the relief of possession in the above-said suit was withdrawn and a fresh suit bearing No.4/2012 (new number 395/2013) for possession and damages @ Rs.95,000/- per month with effect from 1.11.2011 was filed by the respondents which was served on appellant on 21.2.2012.

6. The appellant filed its written statement to the second suit on 15.12.2012 and contested the matter. It was contended that the respondent/plaintiff had no *locus standi* to file a suit since their ownership of the suit premises is based on an unregistered Will which has not been probated. It was further stated that jurisdiction of civil court is barred under the provisions of DRC ACT and therefore the suit instituted by the respondents was not maintainable. The main objection which was taken by the appellant was regarding service of notice under Section 80 CPC and that the alleged notice dated 23.11.2004 for termination of tenancy was not served. All the other averments of the plaint were denied.

7. In view of the contents of the written statement, the respondent chose to file an application under Order XII Rule 6 and prayed that as the appellant had attorned to respondents by paying demand drafts of rent in their names and the notice dated 23.11.2004 terminating the tenancy of

the appellant, required them to vacate the suit premises was duly served, they were entitled to judgment on the basis of these admissions.

8. The appellant filed a reply to the said application denying service of notice under Section 80 CPC. The Ld. Civil Judge partly decreed the suit granting relief of possession in favour of respondent/plaintiff vide order dated 30.9.2014 by observing that even though there is no categorical admission in the pleadings, yet the documents on record are unambiguous and warrant passing of a decree. This order was challenged before Ld. ADJ who has upheld the same and observed that the appellants are estopped from challenging the title of the respondents by virtue of Section 116 of Evidence Act and the notice of termination of tenancy was validly served which was reflected from the RTI reply. It was also reiterated that as per the judgment of *Nopany Investments Pvt. Ltd. Vs. Santokh Singh*; 2008 (2) SCC 728 the service of suit for eviction on defendant itself constitutes termination of tenancy.

9. The learned senior counsel for the appellant has contended that there is no clear cut, unambiguous, unequivocal admission in the written statement made by the appellant in the second suit bearing No.4/2012 (new number 395/2013) which could have warranted passing of a decree under Order XII Rule 6 CPC. It has been contended that the learned trial court in the judgment which has been upheld by the learned ADJ by the impugned order has observed as under :-

“.....there is no categorical admission by the defendants in the pleadings but the documents and correspondence on record are admittedly unambiguous, in fact, there are

constructive admissions which can be inferred from the facts and circumstances of the case which warrants passing of the decree.....”

10. It has been further contended that this so-called admission has been deciphered by the trial court as well as by the first appellate court on the basis of the photocopies of the documents relied upon by the trial court. It has been stated that the photocopies of the documents could not be relied upon for the purpose of reading and admission. It has also been contended that the question of admission is a mixed question of law and fact for which a preliminary issue ought to have been framed for a limited and mandatory trial which has been ignored by the trial court. Reliance in this regard has been placed on *Uttam Singh Duggal & Co. Ltd. vs. United Bank of India*; (2000) 7 SCC 120, *M/s. Jeevan Diesels & Electricals vs. M/s. Jasbir Singh Chadha (HUF) & Anr.*; (2010) 6 SCC 601, *Himani Alloys Ltds.*; (2011) 15 SCC 273, *Payal Vision Ltd.*; (2012) 11 SCC 405 and *Manish Commercial Ltd.*; (2000) II AD Delhi 850. All these judgments are on Order XII Rule 6 CPC.

11. The second submission which has been made by the learned senior counsel for the appellant is that the second suit bearing No.4/2012 (new number 395/2013) which has been filed by the respondent without withdrawing the first suit much less obtaining the leave to file the second suit is in violation of Order II Rule 2 CPC and therefore, the second suit is barred. It has been further stated that the cause of action for filing the second suit is essentially the same which was prevalent at the time of filing of the first suit. In this regard, the learned counsel for the appellant

has placed reliance on *Deepa Dua vs. Tajender Kumar Muteneja* in CS (OS) No.1263/2012, *Parmanand vs. Mani Ram Aggarwal & Ors.* in RFA No.720/2005, *Sucha Singh Sidhi vs. Baldev Raj Walia*; (214) 208 DLR 258, *M/s. Virgo Industries (Eng.) P. Ltd. vs. M/s. Venturetech Solutions P. Ltd.* in Civil Appeal No.6372/2012, *Sarguja Transport Service vs. State Transport Appellate Tribunal*; (1987) 1 SCC 5 and *Krishna Kumari vs. Sunil Kumar Goel & Anr.* in CS (OS) No.560/2012.

12. Mr. J.P. Sengh, the learned senior counsel for the respondent has vehemently contested the submissions made by the learned counsel for the appellant. He has contended that the appellant despite being the State Government is behaving like a private litigant and is depriving the citizen of its right to enjoy the property. It has been contended that so far as Order II Rule 2 CPC is concerned, it is not applicable to the facts of the present case. The reason for this is that Order II Rule 2 CPC clearly lays down that the suit is to include whole of the claim and if it does not include whole of the claim then any part of claim which is left, that cannot be claimed by way of a fresh suit.

13. In the instant case, the learned senior counsel has contended that the first suit which was filed contained the claim for possession, damages, mesne profits, etc. but the present appellant/defendant raised an objection, though technical in nature, that no notice under Section 80 CPC had been given to it. It has been contended that *Jeeven Diesels's* case (*supra*) clearly lays down that the very filing of the suit itself tantamount to termination of tenancy agreement and therefore, no notice was required to

be served yet in order to obviate any technical objection being pressed into service by the appellant, the respondent chose to give a notice under Section 80 CPC and filed a fresh suit. This second suit was filed when the first suit itself was pending. It is contended by Mr. Sengh that Order II Rule 2 CPC precludes filing of a fresh suit in respect of the part of the claim but it does not prevent a party from rectifying a deficiency which may be prevalent in its first suit and rectify and file a fresh suit after rectification.

14. So far as the first submission with regard to the admission of the appellant is concerned, it has been contended by the learned counsel that it does not raise any substantial question of law. The two courts below have considered the question as to whether the appellant has made an unambiguous clear cut admission with regard to the tenancy rights or not and being in possession. This concurrent finding is a question of fact and this admission need not be reflected in the pleadings. In this regard, the learned senior counsel has drawn the attention of the court to the language of Order XII Rule 6 CPC and contended that the said order clearly reveals that an admission can be inferred not only from the pleadings but even 'otherwise' also and in the instant case, though the appellant has denied the admission having been made but it has been contended that the correspondence between the parties, copies of which have not been disputed, clearly reflects that the appellant is the tenant under the respondent and had lastly paid rent which was more than Rs.3,500/- on account of the periodical enhancement and therefore, this

does not allow a State Government to raise a flimsy pretext by avoiding the decree.

15. I have carefully considered the submission and have also gone through the judgments relied upon by the appellant. I find substantial merit in the submissions made by Mr. Sengh, the learned senior counsel for the respondent. The appellant, in the instant case, is Government of Madhya Pradesh. The Government is expected to act in a fair, reasonable and dispassionate manner. Reliance in this regard is placed on *Mahabir Auto Store & Ors. vs. Indian Oil Corporation & Ors.*; AIR 1990 SC 1031 which clearly lays down that Governmental action must satisfy the test of reasonableness. Rules of reason and fair play are part of rule of law which means its decision must be just, fair and reasonable. In the instant case, one gets a feeling that the State Government which had admittedly taken the premises on rent way back in the year 1970 at a paltry sum of Rs.3,000/- wants to perpetuate or rather usurp the property of the respondent for a paltry sum of Rs.6,000/- or so which it is paying now when the rentals which the properties in South Ex. Command almost 100 times more rent than the one which is being paid by them. It seems that though the State Government is intangible but there is definitely some official in the State Government who is out to harass the landlord with a view to prevent them from enjoying their property despite the fact that it has continued to enjoy the same for the last more than 45 years. This thing cannot be permitted to be done. So far as the admission on the part of the appellant is considered, Mr. Sengh's submission is correct that it is in tandem with Order XII Rule 6 CPC which lays down that a party may

make an admission either in the pleadings or it may be inferred from the documents annexed thereto. The exact language of Order XII Rule 6 CPC reads as under :-

“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.”

16. A perusal of the aforesaid provision would clearly show that the admission by a party can be made not only in pleadings but otherwise also. In the instant case, this is not denied by the appellant that it is a tenant in respect of the premises in question and is in possession. It is also not denied that it has increased the rent @ 15 per cent on the basis of the request made by the general attorney of the landlord and the last rent which was paid by them has been prima facie established by the respondent to be Rs.6,034/-. That being the position, the suit property comes out of the Rent Control Act and therefore, this tantamount to an admission on the part of the appellant that it is a tenant commanding a rent of more than Rs.3,500/-. On the basis of this finding, the trial court as well as the first appellate court has arrived at the concurrent finding to the effect that there is an admission on the part of the appellant. In any case, it is a question of fact not a question of law. The judgments are cited by the learned counsel for the respondent/plaintiff on Order XII Rule 6 CPC to contend that admissions should be unequivocal and unambiguous before a judgment is passed is not violated in the present

case. The concurrent finding of facts by the two courts below does not require examination of this aspect by this court. There is no submission pointed out which may be going to the root of the matter.

17. So far as Order II Rule 2 CPC is concerned, that is not applicable to the facts of the present case. The respondent had filed the first suit for possession, damages and mesne profits against the appellant. The appellant contested the suit and took the technical plea that no notice under Section 80 CPC had been given. In order to obviate that technicality, if a notice is given by the respondent and thereafter, a fresh suit is filed, that will not be covered by Order II Rule 2 CPC more so when the second suit is filed at the time when the first suit itself was pending. Further, the cause of action of filing the two suits is totally different. The reason for this is that the cause of action for filing the second suit arises only after the period of notice given to vacate the premises comes to an end under Section 80 CPC. While as there is no such averment or occasion in the first suit. Therefore, both the suits, if read in totality, are premised differently on a different cause of action. Though the relief claimed in both the suits is with regard to possession but admittedly, after filing the second suit, so far as the first suit with regard to possession is concerned, that has been withdrawn. The judgments which have been cited by the learned senior counsel for the respondent, no doubt show that in those cases plea of Order II Rule 2 CPC has been upheld but it is in the facts of those cases. So far as the proposition of law is concerned, the same is no more *res integra*. The question which arises for consideration is whether the second suit is

barred in the present case or not. The answer to this I have given hereinabove in negative because the cause of action in the suits is totally different though some of the paragraphs are common. The Supreme Court itself has said in number of cases that law is not be applied blindly. There should be some co-relation between the facts of the two cases. The learned counsel for the appellant has not been able to show the co-relation of the facts of the reported judgments with that of the present case. So far as the proposition of law laid down in the these cases is concerned, that is not in dispute. I feel this submission of the learned counsel for the appellant also does not raise any substantial question of law. The only question of law which seems to be perceived by the appellant is with a view to raise an objection perpetuate its possession of the suit premises.

18. For the reasons mentioned above, I feel that the appeal of the appellant is totally misconceived and accordingly, the same is dismissed.

V.K. SHALI, J.

APRIL 28, 2016
‘AA’