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

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Date of decision: 04.08.2016

+ C.R.P. 194/2015

RAJAN KAPOOR

..... Petitioner

Through Mr.Vikas Dhawan, Advocate

versus

KRISHAN KUMAR KHURANA

..... Respondent

Through Mr.Shekhar Nanavaty, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition, the petitioner seeks to impugn the order dated 17.11.2015 by which an application under Order XII Rule 6 CPC of the petitioner was dismissed.
2. The petitioner filed a suit for possession, arrears of rent and *mesne profit* seeking a decree for vacant possession of the premises bearing No.IV/1/73A, Ground Floor, Gopinath Bazar, Delhi Cantonment, Delhi measuring 750 sq.ft. (approx.). A decree was also sought for arrears of rent for an amount of Rs.2,40,000/- for the months of September and October, 2014 and other connected reliefs were also sought.
3. It is was pleaded in the pleadings that the parties entered into a lease deed on 26.05.2014 whereby it was agreed that the rent would be paid by the respondent to the petitioner at the rate of Rs.1,20,000/- per month. The rent was commenced from 01.07.2014 and the duration of the lease deed was for three years. The respondent also deposited interest-free security deposit of

Rs.3,60,000/- which was to be reimbursed on expiry of the lease deed. It is further averred in the plaint that possession of the suit property was handed over to the respondent on 01.06.2014. The rent was paid for the months July and August, 2014 only. The respondent thereafter committed default and did not pay the rent for the month of September, 2014.

4. The respondent had filed his written statement where pleas are taken to controvert the averments made in the plaint. Subsequently a compromise agreement was entered into between the parties on 30.03.2015. Alongwith the compromise agreement, a joint application under Order XXIII Rule 3 read with Section 151 CPC was filed in court which stated that the respondent will hand over vacant, peaceful and physical possession to the petitioner of the suit property on or before 13.04.2014, after adjusting the interest-free security deposit of Rs.3,60,000/-. A total sum of Rs.4,00,000/- was to be paid to the petitioner on or before 07.04.2015. The compromise application filed however remained pending before the trial court. In the meantime, some disputes arose on the compliance of the compromise.

5. On 14.07.2015 the trial court while noting the submissions of the respondent came to the conclusion that the compromise agreement is a voluntary act with a view to settle the litigation by complying with the terms and conditions provided therein. Now as the respective parties have disputed the compliance of the compromise agreement, the suit has to progress from the stage where it was halted for amicable settlement. The trial court held that the suit cannot be decreed based on the compromise agreement.

6. Subsequently, the petitioner moved the present application under Order XII Rule 6 CPC seeking a decree for the unpaid dues pointing out that the defendant/respondent had handed over vacant possession on 30.05.2015

and also pointing out that the rents and *mesne profits* from 01.09.2014 to 30.05.2015 are payable as per the admitted lease deed. The trial court dismissed the application concluding that the admittance of the liability is not discernible from any of the pleadings as well as from the compromise deed. At best, it was held that there was admittance by the respondent for making payment of Rs.4,00,000/- out of which Rs.2,00,000/- stands paid. Hence, the application was dismissed.

7. The learned counsel for the petitioner vehemently relied upon the terms of the compromise deed, legal notice dated 01.10.2014 sent to the respondent and the reply by the respondent dated 11.10.2014 to contend that there are clear admissions regarding execution of the registered lease deed between the parties, the agreed rental of Rs.1,20,000/- and hence the question of the trial court dismissing the application under Order XII Rule 6 CPC should not arise. He submits that the rents were due from 01.09.2014 to 30.05.2015. He also submits that in the application under Order XII Rules 6 CPC, an amount of Rs.12,49,600/- is claimed based on the Clause 12(c) of the lease deed as the clause provides that an amount of Rs.5,000/- per day as *mesne profits* is payable in case the lessee fails and neglects to surrender the possession of the said premises upon expiry of the lease deed. He, however concedes that on the basis of lease deed, the total dues payable from 01.09.2014 to 30.05.2015 could be come to Rs.10,06,452/-. On reducing a sum of Rs.3,60,000/- which was given as interest-free security deposit and on reducing another sum of Rs.2,00,000/- which was paid by the respondent after the compromise deed between the parties dated 30.03.2015 a balance of Rs.4,46,452/- would remain payable to the petitioner. This is based on the rent agreed in the lease deed. He, however pointed out that as per Clause

7(b) of the registered lease deed, an interest of 18% p.a. is also liable to be paid by the respondent for any delay beyond the agreed date of payment of rent.

8. The learned counsel for the respondent has not disputed the period for which rent has not been paid. He, however, submits that his client suffered loss and damages as stated in the written statement and in the counter claim. The respondent was deprived of possession of the full area which was the subject matter of the lease deed and hence amount claimed by the petitioner is not due.

9. A perusal of the plaint filed by the petitioner shows that there is a categorical averment about the execution of the lease deed dated 26.05.2014 and that the rental as agreed between the parties is Rs.1,20,000/- per month with a @ 5% increase per annum.

10. This averment is clearly stated in para 3 of the plaint. In the written statement filed by the respondent there is no denial to the execution of the lease deed or of the rental as agreed between the parties. A plea of fraud is sought to be inserted. The relevant portion of para 1 of the written statement seeking to urge the plea of fraud reads as follows:-

“1.....As stated in the preliminary objection the plaintiff has played a major fraud upon the defendant while entering into the lease agreement in respect of the suit property by concealing the fact that the plaintiff has encroached upon the Government land and has also carried out unauthorised constructions against which the Delhi Cantonment Board against which the DCB had filled appropriate proceedings in the relevant Act wherein the plaintiff admitted the offence and had deposited the fine imposed upon him. The site plan showing the encroached portion and its measurement in the suit property is being filled and is annexed as Annexure D-1. It is further wrong and denied

that the plaintiff is competent to institute the present suit as the land in question belongs to Delhi Cantonment Board and has not been leased out to the plaintiff and thus the plaintiff is not the lessee and has no *locus standi* to file the present suit.”

11. I may also look at the legal notice sent by the petitioner and the reply sent by the respondent. The petitioner through his counsel sent a legal notice on 1.10.2014. The legal notice reproduces the contention of execution of a registered lease deed dated 26.5.2014 and monthly rent being Rs.1,20,000/-. Counsel for the respondent has sent a reply on 11.10.2014 where the relevant paras regarding execution of the registered lease deed and the rent are admitted as being matter on record.

12. Similarly, the compromise agreement dated 30.03.2015 executed between the parties also accepts the execution of the lease deed and that the agreed rent is Rs.1,20,000/-.

13. Hence, in the written statement, in reply to the legal notice sent by counsel for respondent and in the compromise agreement a categorical admission is there about execution of a registered lease deed and the rent being payable. The only dispute which was sought to be raised by the respondent is as stated by the respondent in para 1 of the written statement above.

14. The above stated dispute appears to be frivolous on the face of it. The averments in the written statement seek to point out that there is some unauthorised construction on the said property. How any prejudice or damage has been caused to the respondent is neither averred nor explained. The written statement though has a heading “written statement- cum-counter claim” but there is no prayer in the written statement claiming any

damages. There is nothing to show in the written statement or in the counter-claim that any court fees was paid to claim of damages as counter claim. Only the word “written statement –cum- counter claim on behalf of the respondent” is stated in the heading of the written statement. This so called defence is no defence in the eyes of law. In my opinion, there are clear admissions on the part of the respondent admitting the rent payable, namely, Rs.1,20,000/- per month and also admitting the calculations stated by learned counsel for the petitioner as reproduced in the application under Order 12 Rule 6 CPC.

15. I may also add that in the application under Order 12 Rule 6 CPC filed by the petitioner the petitioner had claimed relying upon clause 12 (c) of the lease deed that in the event the respondent fails to surrender possession on termination of the lease deed, the respondent shall be liable to pay compensation @ Rs.5,000/- per day towards mesne profits. It was urged that based on this clause of the lease deed, the respondent would be liable to pay about Rs.1,50,000/- per month as mesne profit/damages. In my opinion, the issue of mesne profit and damages will require evidence. Even otherwise, merely because clause 12 (c) of the lease deed states the said figure the same cannot be awarded to the petitioner in the absence of evidence in view of sections 73 and 74 of the Contract Act.

16. Catena of judgments of this court and the Supreme Court had settled the requirement of Order 12 Rule 6 i.e.:

- (i) ***Vijay Mayne v. Satya Bhushan Kumar***
142(2007)DLT483(DB)
- (ii) ***Usha Rani Jain v. Nirulas Corner House Pvt. Ltd.***
73(1998)DLT124
- (iii) ***Bhupinder Singh Bhalla v. Neelu Bhalla@Neelam Singh***

2014(207)DLT5872

(iv) Himani Alloys Ltd. v. Tata Steel Ltd. 2011 (3) RCR (civil)

17. Reference may be had to judgment of this Court in the case of ***Usha Rani Jain vs Nirulas Corner House Pvt.Ltd(supra)*** where in paragraph 18 the Court held as follows:-

“18. The object of Order XII Rule 6 CPC is to enable a party to obtain a speedy judgment, at least, to the extent of the admissions of the defendant to which relief the plaintiff is entitled to. The rule permits the passing of the judgment at any stage without waiting for determination of other questions. It is equally settled that before a Court can act under Order 12 Rule 6, the admission must be clear, unambiguous, unconditional and unequivocal. Admissions in pleadings are either actual or constructive. Actual admissions consist of facts expressly admitted either in pleadings or in answer to interrogatories. In a suit for ejectment, the factors which deserves to be taken into consideration in order to enable the Court to pass a decree of possession in favour of the plaintiff primarily are:-

A. 1)Existence of relationship of lessor and lessee or entry in possession of the suit property by defendant as tenant;
B 2) Determination of such relation in any of the contingencies as envisaged in Section 111 of the Transfer of Property Act.”

18. Admissions can be inferred from vague and evasive denials or admissions can even be inferred from the facts and circumstances of the case

19. In view of the above, in my opinion, there are clear admissions on record to warrant the application of the petitioner being allowed under Order 12 Rule 6 CPC for recovery of unpaid rentals as per the registered lease deed. Hence, a decree is liable to be passed in favour of the petitioner/plaintiff against the respondent/defendant for unpaid rental of

Rs.4,46, 452/-. The impugned order is accordingly *set aside* and the application of the petitioner under Order XII Rule 6 CPC is allowed as above.

20. A decree is passed in favour of the plaintiff and against the defendant for a sum of Rs.4,46,452/-. The petitioner shall also be entitled to interest @ 9% per annum from the date of termination of the lease w.e.f. 1.10.2014 till the payment is received by the petitioner. Petition is disposed of.

JAYANT NATH, J.

AUGUST 04, 2016/v