

\$~14

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

+ CM(M) 409/2016

CAPT P P SINGH & ORS

..... Petitioners

Through: Ms.Ritu Singh Mann & Mr.Dheeraj
Garg, Advocates.

versus

RKD FINANCIAL SERVICES LTD & ANR

..... Respondents

Through: Mr.Devinder Singh Khatana,
Advocate for R-1.
Mr.Varun Jain, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

01.05.2017

1. This petition under Article 227 of the Constitution impugns the order dated 22nd January, 2016 passed by learned ADJ in Civil Suit No.183/2014 whereby the application of the petitioner/plaintiff under Order XII Rule 6 CPC for passing a decree has been dismissed.

2. The brief facts are noted in paragraph 5 of the impugned order which are as under:-

“5. The present suit was originally filed only against defendant no.1 for seeking relief of possession recovery of arrear of rent and mesne profit/damages. Subsequently, upon an objection taken by the defendant no.1 in his written statement regarding non-joinder of the co-owner Mr.Dilbag Singh, plaintiff moved and application under Order 1 Rule 10 CPC for impleadment of Mr.Dilbag Singh, who was allowed to be arrayed/added as proforma defendant no.2, vide order dated 24.10.2013. He was however, proceeded ex parte vide order dated 07.08.2014.”

3. The application under Order XII Rule 6 CPC was filed by the
CM(M) 409/2016

petitioner/plaintiff on the ground that in view of the admission of defendant No.1 in the written statement about existence of relationship of landlord and tenant between the parties and receiving the notice terminating the tenancy, decree for possession in respect of the suit property may be passed in favour of the petitioner/plaintiff and against respondent No.1/defendant No.1.

4. The prayer for passing a decree for possession has been declined by learned Trial Court mainly for the reasons given in paragraphs 10 to 14 of the impugned order.

5. Learned Trial Court placed reliance on Geeta Parsad v. Mohd. Latif & Ors., 2015 (2) RCR (Rent) 215 which was based on decision of the Hon'ble Supreme Court in India Umbrella Manufacturing Co. vs. Bhagabandei Agrawalla (2004) 3 SCC 178 and summarised the legal position as under:

“In nutshell the legal position which is culled out can be summarised as under:-

(i) The notice determining tenancy has to be by the lessor which includes all lessors. It has to be on behalf of all of them and where it is by one of them the consent of the others can be assumed unless proved otherwise;

(ii) The suit for eviction of tenant can be maintained by one of the co-owners/landlords even where there are other co-owners/lessors on the doctrine of agency assuming the consent of the other co-owners unless their disagreement is established; and

(iii) One of the co-landlords collecting rent for the body of the landlords by consent implicit or otherwise, functions as landlord for all practical purposes and is entitled to institute proceedings qua all landlords;

6. The application was dismissed noting as under:

“13. Upon analyzing the facts of instant case in light of

aforementioned position of law, I am of the view that decree for possession under Order 12 Rule 6 CPC cannot be passed in favour of the plaintiff in view of the fact that presumption regarding implicit consent or agency of other co-owners is a rebuttable presumption and defendant no.1 must get an opportunity to lead evidence to prove the contrary i.e. to prove that the defendants no.2 who is also one of the co-owners/co-landlords had never consented or authorised for the termination of his tenancy.

*14. The reliance placed by the counsel for the plaintiff on the judgment **Y.Sai Baba v. Rawal Mal Narayan Das, 1997 Law Suit (AP) 33** is also misplaced as after having gone through said judgment, I am of the view that same is distinguishable on facts. Because, in said case the eviction petition was filed by a landlady before the Tent Controller on the ground of bonafide requirement which was exclusively available to her and not to the other co-landlords. Whereas, instant suit has been filed for seeking possession under the provisions of Transfer of Properties Act and as per the pleaded case of the plaintiffs, tenancy after expiry of lease period became a month to month tenancy. Hence, termination of tenancy as per requirement of Section 106 of T.P. Act is a pre-requisite condition for seeking possession from the tenant.”*

7. Learned counsel for the petitioner has submitted that in this case not only the initial period of tenancy has come to an end but even the period for which the tenancy was entered into with Sh.Dilbagh Singh allegedly vide rent agreement dated 1st October, 2012 (Annexure P-8) for a period of 36 months has also come to an end. Hence the learned Trial Court has committed an illegality in declining to pass a decree on the basis of admission.

8. Proceeding under Article 227 of the Constitution of India is an extraordinary discretionary constitutional remedy to advance justice and not to thwart it.

9. It is admitted case of the petitioner that the co-owner Sh.Dilbag has been impleaded a defendant No.2 in the civil suit with whom the rent agreement dated 1st October, 2012 was entered into. The main ground for dismissal of the application is that there was no valid notice for termination of tenancy and that presumption recording implicit consent and the tenancy of further co-owners being rebuttable, respondent No.1/defendant No.1 has to be given an opportunity to prove that the respondent No.2/defendant No.1 has not consented or authorised for termination of the tenancy.

10. This Court need not substitute its opinion with the finding of the learned Trial Court unless error of law is apparent on the record which has resulted in grave injustice.

11. In the given facts and circumstances the order passed by learned Trial Court cannot be termed as suffering from perversity.

12. The petition is dismissed.

PRATIBHA RANI, J.

MAY 01, 2017

'hkaur'