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

+ **RFA 504/2017**

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Date of Judgment: 19th May, 2017

RAVI CHAUDHARY

..... Appellant

Through: Mr.Sajjad Adil, Adv.

versus

KANTA AHUJA

..... Respondent

Through: Ms. Prachee Satija, Adv. with Mr.Jai
Sahai Endlaw, Adv.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

C.M.18976/2017 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CAV. No. 490/2017

Since the counsel for the respondent has appeared, the caveat stands discharged.

RFA 504/2017

1. Challenge in this appeal is judgment and decree dated 28th March, 2017 passed by the learned Additional Judge-01 (South), New Delhi, in Civil Suit No.7791/2016 by which on admission of the appellant/defendant under Order XII Rule 6 CPC a decree of possession was passed against him in respect of Second Floor of C-110, New Delhi South Extension, Part II, Delhi-110094.

2. A Lease Deed dated 16th October, 2014 registered in the Office of Sub-Registrar on the same day was executed between the parties by which the respondent/plaintiff let out her said property together with fixtures and fittings to the appellant/defendant for a period of two years with effect from 16th October, 2014 on rent @ Rs.20,000/- per month. The appellant/defendant paid rent of the property in question to the plaintiff/respondent upto May, 2015 only which led the plaintiff to issue a notice to the appellant/defendant dated 24th August, 2015 demanding the balance amount of rent. Notice was not replied. As per the terms and conditions of the Lease Deed, the appellant/defendant has also not paid the electricity and water charges which were Rs.15,340/-. As per Clause 8.1 it was provided that the lessor shall be entitled to terminate the lease if the lessee commits defaults in payment of rent of one month. Under Clause 8.2 either party shall be entitled to terminate the lease by giving two months' notice without assigning any reason with lock in period of one year. Since the appellant/defendant had committed default in making the payment of rent post May, 2015, the respondent/plaintiff vide notice dated 12th October, 2015 demanded the arrears of rent with interest and terminated the lease. This notice was also not responded by the appellant.
3. At the time of filing of the suit on 23rd November, 2015, the appellant was in arrears of rent of Rs.1,00,000/- and electricity charges of Rs.15,340/-. The respondent/ plaintiff has also claimed mesne profits for the month of November, 2015 @ Rs.40,000/-. Respondent/plaintiff also claimed Rs.6,000/- as interest on the arrears of rent. The respondent/plaintiff filed the suit for ejectment of the

appellant from the property in question, recovery of Rs.1,61,350/- which includes arrears of rent, mesne profits of Rs.40,000/- for November, 2015, interest Rs.6,000/- and electricity charges Rs.15,340/-. She also claimed mesne profits with effect from December, 2015 till the date of delivery of possession with interest @24% per annum.

4. In his Written Statement filed on 27th April, 2016, the appellant, *inter alia*, pleaded that the appellant/defendant is not liable to pay Rs.1,61,350/- as the respondent/defendant had already taken security amount of Rs.1 lac at the time of induction as tenant in the property in question. The appellant/defendant did not dispute execution of the Lease Deed dated 16th October, 2014. He has also not disputed rate of rent @ Rs.20,000/- per month. Clauses 8.1 and 8.2 pleaded in Para 2 of the plaint have also not been disputed. However, he pleaded that he has made cash payment of rent and electricity charges till December, 2015. He has disputed the service of both notices dated 24th August, 2015 and 12th October, 2015.
5. The respondent/plaintiff filed the Replication to the Written Statement denying the allegations of the appellant/defendant and reaffirming the averments made in the plaint.
6. There were enough admissions in the Written Statement filed by the appellant/defendant which led the respondent/plaintiff to file an application under Order XII Rule 6 CPC on 2nd February, 2017. Reply to this application was filed by the appellant/defendant. After hearing both the parties, the learned ADJ allowed the said application and passed the impugned judgment and decree on 28th March, 2017.

7. It is submitted by the learned counsel for the appellant/defendant that the appellant has not received any notice of termination of tenancy. He also submits that he is not liable to pay Rs.1,61,350/- or any part thereof on account of arrears to the respondent/plaintiff as the respondent/plaintiff had taken Rs.1 lac as security amount from him at the time of inducting him as a tenant in the premises in question. He further argued that post May, 2015 on the request of the respondent, the appellant started making the payment of rent by cash as due to old age the respondent/plaintiff was facing difficulty in getting the encashment of the cheque and he had paid rent till December, 2016. He submits that the learned Trial Court has failed to follow the legal procedure provided under the Civil Procedure Code.
8. I have heard the learned counsel for the appellant and perused the record.
9. Before appreciating the contentions of the learned counsel for the appellant, it is necessary to refer the relevant provision of law i.e. Order XII Rule 6 CPC which is reproduced 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 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.”
10. Order XII Rule 6 CPC is enacted for the purpose of expediting the trial; if there is any admission on behalf of the defendant or an

admission which can be inferred from the facts and circumstances of the case without any dispute. This rule is an enabling provision which confers discretion on the Court to deliver a speedy judgment on admission and to the extent of the claim admitted by either of the parties of his opponent's claim. A judgment on admission is not a matter of right and rather is a matter of discretion of the Court and is neither mandatory nor it is pre-emptory. This rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it, to succeed.

11. While dealing with the scope of Order XII Rule 6 CPC, it has been held by the Hon'ble Supreme Court in **Himani Alloys Ltd. vs. Tata Steel Ltd., 2011 (7) Scales 566**, that admission should be categorical and conscious and deliberate act of the party showing an intention to be bound by it and relevant Para (9) of the judgment reads as under:

“It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order XII rule 6 CPC being an enabling provision, it is neither mandatory nor preemptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the Defendants, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a Defendant to contest the claim. In short the discretion should be used only when there is clear ‘admission’ which can be acted upon.”

12. Further while dealing with the object and scope of Order XII Rule 6 CPC, the Hon'ble Supreme Court has observed in **Uttam Singh**

Duggal vs. Union of India, MANU/SC/0485/2000: AIR 2000 SC 2740 in the following words:

“As to the object of Order XII Rule 6 CPC, 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 rules, it is stated “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 relief to which according to the admission of the defendants, 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 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. This is an object of Order XII Rule 6 CPC that in appropriate cases parties should not be allowed to continue with the litigation unnecessarily once it is found that there are categorical admissions. This is so as the party admitting the claim should not be allowed to abuse the judicial process of the Court. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary value. The former class of admissions are fully binding on the party that makes them and constitutes a waiver of proof. They by themselves can be made foundation of the rights of the parties.
14. In **Payal Vision Ltd. vs. Radhika Choudhary, 2012 (9) Scales 105** (Para 6), it has been held by the Hon'ble Supreme Court that in a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is

required to be established by the plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under section 106 of the Transfer of Property Act and so long as these two aspects are not in dispute, the court can pass a decree in terms of Order XII Rule 6 of Code of Civil Procedure.

15. Before applying the provision of Order XII Rule 6 CPC and the principles laid down by the Hon'ble Supreme Court to the facts of the present case, it would be relevant to refer Paras 1 and 2 of the plaint:

“1. The Plaintiff vide lease deed dated 16.10.2014 registered with the office of the Sub-Registrar V-A, Delhi as document no..6883 in Book no.1, Vol. No.889 on Pgs.131-135 on 16.12.2014 let out her house property located at second floor C-110, NDSE Part 2, New Delhi together with the fixtures and fittings contained therein to the Defendant for a period of 2 years commencing from 16.10.2014 up to 15.10.2016 at a rent of Rs.20,000 per month and for a period from 16.10.2016 to 15.8.2017 at a rent of Rs.23,000 per month and on the other terms and conditions as contained in the said lease deed and put the Defendant into possession thereof.

2. The Defendant also agreed to pay electricity and water charges as per the meter installed in the premises and as billed by the appropriate authority during the period of his aforesaid occupation. Clauses 8, 8.1, 8.2 and 9.2 of the said registered lease deed are as under:

“8. Termination of the Lease

8.1 The Lessor shall be entitled to terminate this Lease only if the Lessee is in default in the payment of the rent one month after the same has fallen due. This shall be without prejudice to liability of the Lessee to pay interest @ 24% p.a. on arrear of rent.

8.2 Either party shall be entitled to terminate the Lease by giving two months' notice without assigning any reason whatsoever, after the lock in period of one year.

... ..”

16. The corresponding Para No. 1 & 2 of the Written Statement reads as under:

“1-2 That the contents of the paragraphs No.1 and 2 are the matter of record, hence need no reply.”

17. The appellant/defendant has not specifically denied the contents of Para 1 & 2 of the plaint in corresponding para of his written statement and under Order VIII Rule 5 of CPC every allegation of the fact in the plaint, if not denied specifically or by necessary implication, shall be taken to be admitted. From the pleadings of the parties, it is thus evident that the relationship of the landlord and tenant between the parties is admitted by the appellant/defendant, the rate of rent is also admitted to be Rs.20,000/- per month which is more than Rs.3500/- and the appellant/defendant admittedly is not a protected tenant under the provisions of Delhi Rent Control Act, 1955. Admittedly the tenancy was created by way of registered Lease Deed dated 16th October, 2014 and it was provided therein that in case of default of payment of rent, the lessor (the respondent/plaintiff) would be within her rights to terminate the lease.

18. Appellant/defendant has denied the receipt of both the notices pertaining to the demand of arrears of rent and termination of tenancy. The learned ADJ had taken note of the fact that the plaintiff has placed on record the copy of the legal notice of termination of tenancy dated 24th August, 2015 as also the original speed post receipt and the returned envelopes with AD Cards. Learned ADJ also found that the postal receipt as also the UPC placed on record revealed that the notice dated 24th August, 2015 was despatched to the

appellant/defendant at his address given in the memo of parties. The appellant/defendant has not disputed his address.

19. The appellant paid rent till May, 2015 by cheque and thereafter he claimed to have paid rent by cash. The appellant/defendant has not pleaded dates of alleged payment. He has also not filed the receipt(s) of alleged payment by cash. On one hand, the appellant has taken the defence that he is not liable to pay arrears of rent of Rs.1,00,000/- as the respondent had taken security of Rs.1 lac at the time of lease and on the other hand claimed cash payment after May, 2015.
20. During the hearing, this court tried to conciliate between the parties and the appellant was not willing to settle the matter and sought six months' time to vacate and two months time to pay all arrears of rent from June 2015 till now. However, learned counsel for respondent/plaintiff, on instructions, refused to accept the offer. The appellant has, thus, fairly admitted the arrears of rent.
21. Be that as it may, under Clause 8.2, either party could terminate the tenancy after expiry of lock in period of one year.
22. The Apex Court while relying upon its previous judgment in **V. Dhanapal Chettiar vs. Yesodai Ammal, AIR 1979 SC 1745**, has reiterated in **Nopany Investments (P) Ltd. vs. Santokh Singh (HUF), (2008) (2) SCC 781**, that it is well settled that filing of an eviction suit under the general law itself is a notice to quit on a tenant and no notice to quit was necessary under Section 106 of the Transfer of Property Act in order to enable the plaintiff to get a decree of eviction against the defendants. Apart from this, keeping in view the amendment brought about to Section 106 of the Transfer of Property

Act by Amendment No.3 of 2003 and as per which no objection with regard to termination of tenancy is permitted on the ground that legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month as long as a period of 15 days was otherwise given to the tenant to vacate the property and the intention of the legislature is, therefore, clear that the technical objections should not be permitted to defeat the substantial justice and the suit for possession of the tenanted premises once the tenant has a period of 15 days to vacate the tenanted premises. Even otherwise the present suit having been filed by the respondent/plaintiff on 23rd November, 2015 against the appellant/ defendant itself is a notice of termination of the tenancy of the appellant/defendant and lock in period of one year, mentioned in Clause 8.2 of the Lease Deed, is already expired during the pendency of suit before passing of impugned judgment and decree dated 28th March, 2017.

23. Therefore, the tenancy of the appellant/defendant pertaining to the property in question has been validly terminated by the respondent/plaintiff in terms of Clauses 8.1 and 8.2 of the admitted registered lease deed between the parties.
24. In view of above discussion, the learned Trial Court has rightly found that there was no triable issue and consequently the present case was a fit case for pronouncing the judgment on admissions against the appellant/defendant.
25. I find no merit in the appeal. The same is dismissed with no order as to cost.

CM No.18975/2017 (for stay)

In view of the dismissal of the appeal, this application under Order 41 Rule 5 read with section 151 CPC, for stay of the impugned judgment and order, is also dismissed.

VINOD GOEL, J.

MAY 19, 2017/jitender

