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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2018

DELIVERED ON : 13.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD) (MD) No.1094 of 2018
and C.M.P.(MD) No.4741 of 2018

T.K.Chinnasamy Pillai
(Through his General Power Agent
K.Mayilvel, S/o.Kanthasamy Pillai)

...Petitioner

-vs-

1. Thangammal
2. N.Ilangovan
3. T.Arumugam

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to call for the records of the lower Court and allow this Revision Petition and set aside the Fair and Decretal order dated 18.04.2018 passed in I.A.No.439 of 2017 in O.S.No.84 of 2005 on the file of the Principal District Munsif, Manamadurai.

For Petitioner : Mr.V.Rama Krishnan

For Respondents : Mr.V.Nagendran

O R D E R

The revision petitioner is the plaintiff in the suit in O.S.No.84 of 2005 on the file of the Principal District Munsif, Manamadurai, filed seeking, *inter alia*, handing over the vacant possession of the suit property and various other reliefs.

2. Pending disposal of the suit, the plaintiff took out an application in I.A.No.439 of 2017 in O.S.No.84 of 2005, seeking to pass a judgment and decree enabling the plaintiff to recover possession of the suit property from the defendants on the basis of their admissions made in the written statement under Order XII Rule 6 of C.P.C. and said application was dismissed by the trial court, on the ground that *bona fide* of the agreement could be established only after the conclusion of the trial. Aggrieved by the said order, the present revision petition has been filed.



3. It is the case of the revision petitioner that he is the Power Agent of the plaintiff and the main suit was filed for recovery of possession from the defendants 1 and 2, who are tenants, and the 3rd defendant, who claims to be the purchaser of a portion of the suit property.

4. The scheduled mentioned property originally belonged to the plaintiff and his co-sharers and thereafter, it devolved upon the plaintiff by virtue of an arrangement between him and his co-sharers. It is the further case of the revision petitioner that earlier, one Janakiraman was the main lessee under the plaintiff and his co-sharers and after the arrangement made between the plaintiff and his co-sharers, one Nagarajan became the main lessee of the property of the plaintiff, who had been a subtenant under Janakiraman. Though the said Nagarajan had been initially paying the lease amount regularly, thereafter, he stopped paying the same for the reasons known to him.

5. It is also the case of the revision petitioner that the main lessee Nagarajan died in March, 2004 leaving behind his legal heirs, namely, defendants 1 and 2 herein, to succeed his leasehold rights in favour of the suit property and despite several demands, they also failed to pay the lease amount. Subsequently, to the utter shock and surprise, the plaintiff came to know of the fact that the defendants 1 and 2 transferred a portion of the suit schedule property to the 3rd defendant by way of illegal means, which necessitated the plaintiff to cast legal notice to the defendants 1 and 2, calling upon them to hand over the vacant possession of the property, as the lease was terminated as early as 28.02.2005 itself, with the demand of payment of arrears of lease amount.

6. The revision petitioner states that even after receipt of the legal notice, instead of vacating the suit property, they sent a reply notice by levelling false, fraudulent and baseless allegations against the plaintiff, by creating a fraudulent sale agreement. It is alleged that such allegations are raised by the defendants 1 and 2 only to wriggle out of the legal consequences and on account of the denial of the defendants to surrender the suit property. The plaintiff had initiated lis against the defendants, in which, the defendants have stated that they are also one among the tenants, who had put up superstructure on the vacant site on payment of monthly lease. The revision petitioner further states that when the defendants 1 and 2 themselves admitted that they occupied the property in the capacity of tenant in the written submissions, it is clearly established that they have no right or title over the property and they have to hand over the vacant possession owing to termination of lease.



7. Learned counsel for the petitioner, in support of his submission that the trial court is empowered to deliver the judgment based on admissions in the written argument, has strongly relied upon the following decisions of the Hon'ble Supreme Court:

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- (i) *Karam Kapahi and others vs. M/s.Lal Chand Public Charitable Trust and another*, reported in 2010 (4) SCC 753; and
- (ii) *M/s.Payal Visions Ltd., vs. Radhika Choudhary*, reported in 2012 (11) SCC 405,

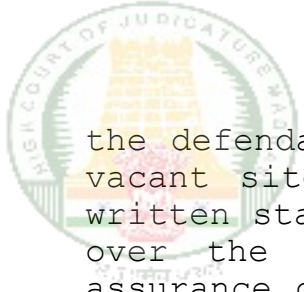
8. He strenuously contended that the trial court fell in error in holding that there was no clear admission by the defendants with regard to the existence of a relationship of landlord and tenant between them and issuance of notice.

9. Per contra, learned counsel for the defendants/respondents contended that since unequivocal admission of the relevant aspects in the written submission was found missing, the trial court was justified in dismissing the application filed by the plaintiff. Assuming *arguendo* that such admission was made, mere admission of landlord and tenant relationship by the defendants cannot take away rights of the defendants in contesting the matter without going into the other averments made in the written statement, as they also claimed that their father had entered into a sale agreement with the plaintiff and its veracity cannot be simply brushed aside without conducting the trial of the case in toto.

10. Learned counsel for the defendants/respondents would further contend that once the sale agreement itself was entered into between the plaintiff and the father of the defendants, such denial by the Power Agent cannot be accepted and not maintainable. Moreover, the examination of P.Ws.1 to 3 was completed and when the suit was posted for plaintiff side evidence, the application was filed only to protract the proceedings. Therefore, the act of the plaintiff is highly condemnable and this petition is liable to be dismissed with exemplary costs.

11. I heard Mr.V.Ramakrishnan, learned counsel appearing for the petitioner and Mr.V.Nagendran, learned counsel appearing for the respondents and also perused the documents available on record, including the citations referred to by the counsel for the petitioner.

12. The suit was filed by the revision petitioner as the defendants failed to comply with the demand made by the plaintiff in respect of handing over the vacant possession of the suit property. The property in question was initially leased out to one Nagarajan and pursuant to his demise in the year 2004, his wife and sons, namely, defendants 1 and 2, succeeded to the said Nagarajan's leasehold rights and in the written statement, it was stated that



the defendants used to give Rs.40/- per month towards rent for the vacant site for putting up the superstructure. Subsequently, the written statement was made to read as if the defendants have rights over the property on account of the sale agreement and oral assurance given by the plaintiff and his son Mani. It is the claim of the plaintiff that having accepted their tenancy and existence of landlord and tenant relationship, the refusal to hand over the possession even after termination of lease deed would deprive the livelihood of the plaintiff.

13. Before advertng to the merits of the matter, it is apposite to refer to Order XII Rule 6 of CPC, which empowers the Court to pass a decree, if the factum of jural relationship of landlord and tenant between the parties and issuance of notice under Section 106 of the Transfer of Property Act, is well established. Order XII Rule 6 of CPC reads as under:

"Order XII Rule 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.

14. Order XII Rule 6 of 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 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 on the face of which it is impossible for the party making it, to succeed.

15. In the present case on hand, it has to be ascertained as to whether any such admission is made in the written statement and whether the notice of termination of lease was sent to the tenant by the plaintiff, for the purpose of giving quietus to the issue.

16. At the juncture, it is appropriate to extract certain contents inscribed in the written statement filed by the defendants 1 and 2, which read as follows:

<https://hcservices.ecourts.gov.in/hcservices>
*Not to be published
 17. Thereafter, due to some civil litigations the plaintiff began to collect the rent from the persons who put up*



their superstructures on the vacant site, as tenant. The defendants are also one among the tenant, who had put up superstructure on the vacant site to an extent of 63 x 33 on the basis of monthly lease of vacant site.

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8. The defendant used to give R.40/- P.M., towards rent for the vacant site when he put up superstructure and wherein he was living with his family for the past more than 40 years.

9 to 14.....

15. As the defendants were not fully aware of the factum of the sale agreement and sale receipt executed between the aforesaid Mani and Nagarajan did not take any action for the execution of sale deed. Now only, that too, after the receipt of plaintiff's lawyer notice, the defendants came to know of the fact that the plaintiff, who is not known to the defendant is now taking steps to evict the defendants with a view to grab the suit property from the defendants in the absence of the plaintiff's son late. Mani, suppressing the execution of sale agreement and sale receipt given for the oral sale."

(emphasis supplied)

17. The plaintiff has reiterated that he sent a legal notice dated 24.01.2005 to the defendants 1 and 2, duly intimating termination of the tenancy in respect of the defendants 1 and 2 and the receipt of such notice was not negated by the defendants, which is evident from the reading of paragraph (15) of the written statement as indicated above. That apart, the factum of payment of rent is also amply clear from a reading of paragraph (8) of the written statement, referred supra.

18. In the light of the above factual position, let us now analyze the law laid down on this issue.

19. While dealing with the scope of Order XII Rule 6 of CPC, it has been held by the Hon'ble Supreme Court in *Himani Alloys Ltd. v. Tata Steel Ltd.*, reported in (2011) 15 SCC 273, that admission should be categorical and conscious and deliberate act of the party showing an intention to be bound by it and relevant portion of the said decision 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 of 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."

20. Further, while dealing with the object and scope of Order XII Rule 6 of CPC, the Hon'ble Supreme Court has observed in *Uttam Singh Duggal & Co Ltd. v. Union of India*, reported in (2000) 7 SCC 120, as under:

"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."

21. Thus, it is explicit that the object of Order XII Rule 6 of CPC is to ensure that in appropriate cases parties should not be allowed to continue with the litigation unnecessarily once it is found that there are categorical admissions. The true intent behind is that the party admitting the claim should not be allowed to abuse the process of the Court.

22. In *Karam Kapahi and others vs. M/s.Lal Chand Public Charitable Trust and another*, reported in (2010) 4 SCC 753, the Hon'ble Supreme Court held as under:

"46. The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about 'which there is no controversy' [See the dictum of Lord Jessel, the Master of Rolls, in *Thorp*



versus Holdsworth in (1876) 3 Chancery Division 637 at 640]. In this connection, it may be noted that order 12 Rule 6 was amended by the Amendment Act of 1976.

47. Prior to amendment the Rule read thus:-

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"6. Judgment on admissions. - Any party may, at any stage of a suit, where admissions of facts have been made, either on pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment, as the Court may think just."

48. 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 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.

49. 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 in as much 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'."

23. In yet another decision in *M/s. Payal Visions Ltd., vs. Radhika Choudhary*, reported in 2012 (11) SCC 405, the Hon'ble Supreme Court held as under:

"7. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for



determination in this case and in every other case where the plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in *Jeevan Diesels & Electricals Ltd. (supra)* relied upon by the High Court where this Court has observed:

"Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in *Karam Kapahi (supra)* may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation."

....

9. In the written statement filed by her, the defendant has while asserting that the averments made in para 2 above are vague, false and wrong asserted that the property in question was not let out for residential purposes as alleged by the tenant but was constructed for commercial use and let out for that purpose only. The execution of the lease deed dated 10th October, 2001 to which the plaintiff made a reference in para 2 of the plaint is also not denied. Although the defendant appears to be suggesting some collateral agreement also to have been orally entered into by the parties, the relevant portion of the written statement dealing with these aspects may at this stage be extracted:

"..... It is further denied that property was let out for residential purposes. As submitted in preceding paras the said property was constructed for use of commercial purposes and was let out for commercial purposes at commercial rent. Execution of Lease Deed is though not denied but is vehemently submitted that the said document was entered upon on the asking of the plaintiff whereas the terms were different than those incorporated in the lease deed."



10. When placed in juxtaposition the averments made in the plaint and the written statement clearly spell out an admission by the defendant that lease agreement dated 10th October 2001 was indeed executed between the parties. It is also evident that the monthly rent was settled at Rs.50,000/- which fact too is clearly admitted by the defendant although according to the defendant, the said amount represented rent for commercial use of the premises and not residential purposes as alleged by the plaintiff. Suffice it to say that the averments made in the written statement clearly accept the existence of the jural relationship of landlord and tenant between the parties no matter the lease agreement was not duly registered. Whether the tenancy was for residential or commercial use of the property is wholly immaterial for the grant of a decree for possession. Even if the premises were let out for commercial and not residential use, the fact remained that the defendant-respondent entered upon and is occupying the property as a tenant under the plaintiff. The nature of this use may be relevant for determination of mesne profits but not for passing of a decree for possession against the defendant.

11. Incidentally, the defendant appears to have raised in the written statement a plea regarding the nature and extent of the super structure also. While the plaintiff's case is that the super structure as it existed on the date of the lease deed had been let out to the defendant and the defendant had made structural changes without any authorisation, the defendant's case is that the super structure was constructed by her at her own cost pursuant to some oral agreement between the parties. It is unnecessary for us to delve deep into that aspect of the dispute, for the nature and extent of superstructure or the legality of the changes allegedly made by the defendant is not relevant to the determination of the question whether the existence of tenancy is admitted by the defendant. At any rate, nature and extent of structure whether modified or even re-constructed by the defendant is a matter that can not alter the nature of the possession which the defendant holds in terms of the agreement executed by her. The relationship of the landlord and the tenant remains unaffected even if the tenant has with or without the consent of the landlord made structural changes in the property. Indeed if the tenancy was protected by the rent law and making of structural changes was a ground for eviction recognised by such law, it may have been necessary to examine whether the

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26. It could be noted that if both the averments in the plaint and the written statement are juxtaposed, in the light of the law enunciated in various decisions of the Hon'ble Supreme Court, supra, no other conclusion than the one that there was a clear admission on the side of the defendants regarding their tenancy in the suit property under the plaintiff and also receipt of notice from the plaintiff, can be arrived at by this Court. The twin conditions required to be satisfy Order XII Rule 6 of CPC, in my considered opinion, are satisfied. This Court finds force in the contentions raised by the plaintiff, as the procedures adumbrated under the relevant provisions of law and the ratio laid down by the Hon'ble Supreme have been duly complied with.



27. Moreover, in the report of the 54th Law Commission (as specifically pointed out by the Hon'ble Supreme Court in the case, referred to supra), an amendment was suggested to the effect that the Court can be permitted to give a judgment not only on the application of a party, but on its own, in other words, a party, on the admission of the other, can press for judgment as a matter of legal.

28. For the foregoing reasons, this Court is of the firm view that the Court below fell in error while passing the order dated 18.04.2018 passed in I.A.No.439 of 2017 in O.S.No.84 of 2005 and is unable to subscribe the the same.

29. In the result:

a) this civil revision petition is allowed and the order dated 18.04.2018 passed in I.A.No.439 of 2017 in O.S.No.84 of 2005, by the learned Principal District Munsif, Manamadurai, is hereby set aside;

(*)b) The respondents are directed to vacate the premises and hand over the vacant possession to the petitioner/plaintiff within a period of three months from the date of receipt of a copy of this order; and

c) No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl. Side)
(dated: 09.10.2018)

**(*) amended as per order of this
Hon'ble Court dated 16.10.2018**

Sd/-

Assistant Registrar (Crl. Side)
(dated: 24.10.2018)

// True Copy //

Sub Assistant Registrar (CS-IV)

To:

(*) TO BE SUBSTITUTED THE ORDER ALREADY DESPATCHED ON 09.10.2018

1. The Principal District Munsif,
Manamadurai.



2. The Record Keeper, V.R. Section (2 COPIES)
Madurai Bench of Madras High Court,
Madurai.

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+1 CC To MR.V.NAGENDRAN, Advocate SR. NO.72851

+2 CC To MR.V.RAMAKRISHNAN, Advocate SR. NO. 72729 & **90921**

PRE-DELIVERY ORDER IN
C.R.P.(PD) (MD) No.1094 of 2018
and C.M.P.(MD) No.4741 of 2018

AR/VSV

TR/RP/SAR-I(09.10.2018)11P 6C

TR/SKN/SAR-IV(23.10.2018)12P 7C