

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

% **Date of decision: 12th October, 2018.**

+ **RSA 148/2018**

SANTOSH KUMAR **..... Appellant**

Through: Mr. Avniash Kumar Lakhanpal, Adv.

Versus

**COL. SATSANGI'S KIRAN MEMORIAL AIPECCS
EDUCATIONAL COMPLEX & ANR**

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM Nos.42968/2018 & 42970/2018 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

RSA 148/2018 & CM No.42969/2018 (for stay)

3. This Regular Second Appeal (RSA) under Section 100 of the Code of Civil Procedure Code, 1908 (CPC) impugns the judgment and decree [dated 16th August, 2018 in RCA SCJ No.8/17 (CNR No.DLST03-000251-2017) of the Court of Senior Civil Judge (South)] of dismissal of First Appeal under Section 96 of the CPC filed by the appellant / defendant against the judgment and decree [dated 7th December, 2016 in CS No.83061/2016 of the Court of Civil Judge-02 (South)] allowing on admissions the suit of the respondents / plaintiffs for mandatory injunction directing and commanding the appellant / defendant to handover vacant and peaceful possession of one room on the ground floor of the property of the respondents / plaintiffs

being a public school in the name of Col. Satsangi's Kiran Memorial Public School established by the respondent/plaintiff no.2 All India Personality Enhancement and Cultural Centre for Scholars Society and the hostel accommodation wherein was being managed by the respondent/plaintiff no.1 Col. Satsangi's Kiran Memorial AIPECCS Educational Complex.

4. The counsel for the appellant / defendant has been heard and the copies of the trial court record annexed to the memorandum of appeal perused.

5. The respondents / plaintiffs instituted the suit, from which this Second Appeal arises, pleading that (i) the respondent no.2 / plaintiff is a Society registered under the Societies Registration Act, 1860 and has established Col. Satsangi's Kiran Memorial Public School; (ii) the said school has a complex in the name of Col. Satsangi's Kiran Memorial AIPECCS Educational Complex which *inter alia* runs and manages the hostel for the students and also a residential complex for staff and teachers, run by the respondent no.2 / plaintiff Society; (iii) the appellant / defendant had been retained by the respondent no.1 / plaintiff for washing clothes of the students on piece rate basis fixed and decided mutually between the appellant / defendant and the respondent no.1 / plaintiff; (iv) the role of the appellant / defendant was confined only to washing the clothes of the students and to get payment from the respondent no.1 / plaintiff on piece rate basis; (v) for the said purposes, the appellant / defendant was provided two rooms for his residence-cum-washing in the property aforesaid of the respondents / plaintiffs; (vi) the license granted by the respondents / plaintiffs to the appellant / defendant in this regard was withdrawn in June,

2013 but the appellant / defendant did not leave the two rooms in which he was allowed to carry out his duties; (vii) the respondents / plaintiffs could take back possession of only one room on 11th January, 2014 but the appellant / defendant resisted vacating the other room; (viii) the appellant / defendant instituted a suit for permanent injunction for restraining the respondents / plaintiffs from taking possession of the other room but the said suit was dismissed vide judgment dated 15th July, 2015; (ix) in the aforesaid judgment, it was held that the status of the appellant / defendant was merely that of a licensee and which licence had been terminated on 11th July, 2013; (x) the application of the appellant / defendant for interim stay in the aforesaid suit was also dismissed and the appeal preferred by the appellant / defendant thereagainst also dismissed; and, (xi) the appellant / defendant, in the pleadings in the suit filed by him, also admitted being a licensee under the respondents / plaintiffs. Hence, the reliefs of mandatory injunction, directing the appellant / defendant to hand over possession of the remaining one room and for permanent injunction restraining the appellant / defendant from parting with possession of the said room to any other person were claimed in the suit.

6. The appellant / defendant contested the suit aforesaid by filing a written statement *inter alia* pleading, that (a) the suit was bad for non-joinder of Central Government who was the owner of the land underneath the property of the school; (b) the appellant / defendant was a permanent licensee, after getting construction made by investing his own funds and with due permission of the respondents / plaintiffs; (c) the entire portion in occupation of appellant/defendant was developed by the appellant /

defendant by investing his own funds, after due approval of School Manager who inducted the appellant / defendant; and, (d) the permanent license could not be revoked.

7. The Suit Court, vide order dated 7th December, 2016 allowed the suit on admissions, under Order XII Rule 6 of the CPC, reasoning that (i) the appellant / defendant had admitted that he was permitted by the respondents / plaintiffs to stay in the premises for a particular job work; (ii) the appellant / defendant had also admitted that the said work had been withdrawn by the respondents / plaintiffs (iii) service of notice of vacation by the respondents / plaintiffs on the appellant / defendant also stood admitted; (iv) the appellant / defendant had also admitted that the suit earlier filed by him for permanent injunction was dismissed on 15th July, 2015; (v) in *Maria Margarida Sequeira Fernandes Vs. Erasmo Jack De Sequeira* (2012) 5 SCC 370, it had been held that no one acquires title to the property if he or she was allowed to stay in the premises gratuitously; even by long possession of years or decades or even if the person has spent some money in the property for repair etc., such person would not acquire any right or interest in the property and will remain licensee only; (vi) hence, the plea of the appellant / defendant that he had spent his own funds and developed the property was without any substance in the context of present facts and circumstances of the case; (vii) Order XII Rule 6 of the CPC had been enacted to avoid trial if there was any admission or admission could be inferred from facts and circumstances of the case; (viii) reliance in this regard was placed on *Anar Devi Vs. Nathu Ram* (1994) 4 SCC 250, *ASSOCHAM Vs. Y.N. Bhargava* (2011) 185 DLT 296 and *Harbhajan*

Singh Vs. Mahinder Singh @ Micy (2014) 208 DLT 690. Thus, a direction was issued to the appellant / defendant to vacate and the appellant / defendant was restrained from parting with possession of the premises to any third party.

8. The First Appeal preferred by the appellant / defendant was dismissed after recording various contentions made by the counsel for the appellant / defendant and reasoning that (a) a perusal of the plaint and the written statement clearly revealed that appellant / defendant had admitted all the basic facts of the case; (b) the appellant / defendant had admitted that he was kept in the premises as a licensee as he was given contract for washing the clothes of students of the hostel; (c) the appellant / defendant had also admitted that he had filed a previous suit for permanent injunction and which suit was dismissed; (d) the appellant / defendant had also admitted that his contract of washing was revoked / withdrawn and a letter had been issued to him to vacate the premises; (e) the only contention of the appellant / defendant in the appeal was that he had raised constructions of permanent nature and due to which he had acquired status of a permanent licensee as per Section 60(b) of the Indian Easements Act, 1882 and could not be evicted; however, the appellant / defendant had not filed any documentary proof nor any photographs to show what type of construction had been raised by him and what expenses had been incurred by him therefor; (f) the appellant / defendant had not even mentioned the details of construction carried out or any specific date, month or year when the construction was carried out; (g) the appellant / defendant had also failed to show that he had any permission to carry out any such construction; (h) the

pleas of the appellant / defendant did not fall under Section 60(b) of the Indian Easements Act; and, (i) the trial court was therefore right in allowing the suit under Order XII Rule 6 of the CPC.

9. The counsel for the appellant / defendant argues that, (i) the case did not fall under Order XII Rule 6 of the CPC; (ii) the Suit Court and the First Appellate Court have given different reasons for rejecting the plea of the appellant / defendant of the licence of the appellant / defendant being permanent; (iii) neither of the Courts have dealt with the plea of the appellant / defendant that the respondents / plaintiffs had no title to the land underneath the property of the school and a portion whereof is in occupation of the appellant / defendant; and, (iv) even if the written statement of the appellant / defendant did not disclose any defence, it was always open to the appellant / defendant, once issues were framed and suit was put to trial, to amend his written statement.

10. I will take up the last of the aforesaid arguments first.

11. To say the least, the same is preposterous. A suit, if on the pleadings therein does not raise any triable issues, cannot be put to trial in expectation that the written statement will be amended and amendment will be allowed and the amended written statement will raise triable issues.

12. The court cannot frame an issue and put a suit to trial when the parties, on perusal of the pleadings, are not found to be on issue at any question of law or fact. Attention of the counsel for the appellant / defendant in this regard is drawn to Order XV of the CPC which has been referred to in several of the judgments under Order XII Rule 6 of the CPC.

In Ashoka Estate Pvt. Ltd. Vs. Dewan Chand Builders Pvt. Ltd. 159
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(2009) DLT 233, reiterated in *Vireet Investments Pvt. Ltd. Vs. Vikramjit Singh Puri* 2017 SCC OnLine Del 11183 and again reiterated in *Bhupinder Jit Singh Vs. Sonu Kumar* 2017 SCC OnLine Del 11061, it was held (i) that the plaintiff, if otherwise found entitled to a decree on admission, cannot be deprived thereof by astute drafting of the written statement and/or by taking pleas therein which have no legs to stand upon; (ii) the Court is to read the pleadings of the parties meaningfully; (iii) issues are to be framed on 'material' and not all propositions of law and fact which may be contained in the pleadings and which are not material i.e. on the outcome whereof the outcome of the suit does not depend; (iv) a plea, which on the face of it is found by the Court to be untenable, does not require the framing of any issue. In *Adarsh Kumar Puniyani Vs. Lajwanti Piplani* 2015 SCC OnLine Del 14022 it was held that material propositions of law or fact would mean such issues which are relevant and necessarily arise for deciding the controversy involved; if a plea is not valid and untenable in law or is not relevant or necessary for deciding the controversy involved, the Court would not be bound and justified in framing issue on such unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time; (v) the Court is not obliged to, on finding pleas to have been raised in the written statement, mechanically frame issues thereon. If issues were to be framed in such manner, the same would be in disregard of the word 'material' in Order XV Rule 1 of the CPC; (vi) the enquiry thus to be made at the time of framing of issues is, whether the pleas raised in the written statement, purportedly in defence to the claim in the plaint, have any material bearing to the outcome of the suit and if it is found that irrespective

of the findings thereon, the plaintiff would be entitled to the relief, the parties are not to be put to trial in the suit. Similarly, in ***Zulfiquar Ali Khan Vs. Straw Products Ltd.*** 87 (2000) DLT 76, it was observed that it is a notorious fact that to drag the case, a litigant often takes all sorts of false or legally untenable pleas and it was held that legal process should not be allowed to be misused by such persons and only such defence as give rise to clear and *bona fide* dispute or triable issues should be put to trial and not illusory or unnecessary or *mala fide* based on false or untenable pleas to delay the suit. It was yet further held that the Court is not bound to frame an issue on unnecessary or baseless pleas, thereby causing unnecessary and avoidable inconvenience to the parties and waste of valuable Court time. Reference in this regard may also be made to ***Kawal Sachdeva Vs. Madhu Bala Rani*** 2013 SCC OnLine Del 1479, ***P.S. Jain Co. Ltd. Vs. Atma Ram Properties (P) Ltd.*** (2013) 205 DLT 302, ***Vansons Footwear (P) Ltd. Vs. USP Fashion Weaves (P) Ltd.*** 2018 SCC OnLine Del 6998 and ***A.N. Kaul Vs. Neerja Kaul*** 2018 SCC OnLine Del 9597.

13. However, the counsel for the appellant / defendant is not aware of Order XV Rule 1 of the CPC which is as under:

“1. Parties not at issue— Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.”

14. Though the present case also falls under Order XII Rule 6 of the CPC but even if not, it clearly falls under Order XV Rule 1 of the CPC and no error has been committed by the Suit Court and the First Appellate Court in allowing the suit of the respondents / plaintiffs without any trial.

15. As far as the argument of the counsel for the appellant / defendant of there being no admission in the written statement of the appellant / defendant is concerned, in *Vijaya Myne Vs. Satya Bhushan Kaura* 2007 SCC OnLine Del 828 (DB), *Rajesh & Co. Vs. Ravissant Pvt. Ltd.* 2012 SCC OnLine Del 2197 (DB), *ING Vysya Bank Ltd. Vs. Vikram Hingorani* 2014 SCC OnLine Del 478 (DB) (SLP(C) Nos.8694-8696/2014 preferred whereagainst was dismissed on 25th April, 2018) and *A.N. Kaul* supra, it has been held that rarely is there any admission in express terms but the Court has to read the written statement meaningfully and then see whether it raises any defence; the court is not required to mindlessly and mechanically frame issues in all the suits and relegate the parties to trial when a meaningful reading of the written statement does not disclose any defence and the suit is bound to be decreed.

16. As far as the contention of the counsel for the appellant / defendant, of the Suit Court as well as the First Appellate Court having given different reasoning with respect to the plea of permanent licensee is concerned, I do not find the reasoning to be different. It is just that the reasoning given by the First Appellate Court is more elaborate than the reasoning given by the Suit Court. However, both the Courts are right in what they have held. In fact, mention may also be made of *Gesture Hotels And Food Pvt. Ltd. Vs. The New Delhi Municipal Council* AIR 2014 Del 143 and *Ambika Soni Vs. Union of India* (2015) 222 DLT 195 where, on a reading of Section 60 along with Section 64 of the Indian Easements Act, it has been held that the only remedy of a licensee who has been wrongly removed is to recover compensation from the licensor and a licensee, after termination of the

license, can neither retain accommodation nor seek to be put back into possession thereof. Thus, the very premise of the defence of the appellant / defendant on this ground has no basis in law.

17. I have even otherwise enquired from the counsel for the appellant / defendant as to what and how much construction was raised by the appellant / defendant.

18. The counsel for the appellant / defendant states that two rooms were constructed by the appellant / defendant.

19. On enquiry, it is clarified that the said two rooms were the same two rooms of which the appellant / defendant was in occupation and possession of one of which has already been taken.

20. I have enquired from the counsel for the appellant / defendant, whether the appellant / defendant had taken any permission for construction from the Municipal Corporation.

21. The answer is in the negative.

22. Section 60(b) of the Indian Easements Act, which makes a licence irrevocable where the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution, cannot be read as permitting a licensee to execute works, though of a permanent character, but otherwise illegal i.e. in violation of laws. No law can be interpreted as permitting an illegality and / or violation of another law. When Section 60(b) of the Indian Easements Act makes the license of a licensee who has executed works of a permanent character, irrevocable, it has to be necessarily understood that the works of permanent character have

been carried out in accordance with law i.e. after obtaining all the requisite permissions for the works which require permission. Works, even if of permanent character, which have been carried out without such permissions, are mere illegalities and have to be ignored and no benefit thereof can be given under any law to any person. The plea of the appellant / defendant of permanent license is doomed for this reason also.

23. That brings me to the last argument of the counsel for the appellant / defendant, of the plea in the written statement of the appellant / defendant of the land underneath the property of the school of the respondents / plaintiffs belonging to the government.

24. The appellant / defendant has not controverted that he was inducted into the property of the respondents / plaintiffs school by the respondents / plaintiffs. Once the appellant / defendant came into the premises with the permission of the respondents / plaintiffs, the appellant / defendant is barred by Section 116 of Evidence Act, 1872 from challenging the right or title of the respondents / plaintiffs. Reliance in this regard can be placed on **S.K. Sarma Vs. Mahesh Kumar Verma** (2002) 7 SCC 505.

25. This Second Appeal is thoroughly misconceived and an abuse of the process of law. It is found that the appellant / defendant, by so abusing the process of law, has already overstayed in the premises of the school for the last over five years. The counsel for the appellant / defendant, on enquiry, states that no *mesne profits* have been decreed against the appellant / defendant and no claim therefor is pending. It is also found that though during the pendency of the First Appeal there was a stay of execution, but while vacating the said stay at the time of dismissal of First Appeal, equities

were not balanced and the appellant / defendant was not directed to pay any compensation to the respondents / plaintiffs for the period for which he enjoyed the stay. Considering all the said facts, while dismissing this appeal, the appellant / defendant is also burdened with costs of Rs.1 lac. If the said costs are not paid, the respondents / plaintiffs shall be entitled to recover the same by execution as a decree.

Decree sheet be drawn up.

OCTOBER 12, 2018
'gsr'

RAJIV SAHAI ENDLAW, J.