

\$~2

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

+ RFA 195/2020

RAKESH AGARWAL Petitioner
Through Mr. Sharvan Dev and Mr. S.N.
Sharma, Advocates.

versus

NITIN GUPTA Respondent
Through

CORAM:
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
% **18.03.2020**

CM APPL. 10072/2020 (Exemption)

Allowed, subject to just exceptions.

RFA 195/2020 & CM APPL. 10071/2020 (stay)

By the instant appeal, the appellant assails the order dated 19.12.2019 passed by the Id. ADJ-07/SE/Saket Courts, whereby, a Decree of possession in respect of an immovable property has come to be passed.

The appellant is aggrieved of the Decree of possession passed in favour of the respondent and against the appellant in respect of the premises L-387, 2nd floor, Sarita Vihar, New Delhi. Such decree has come to be passed invoking Order XII Rule 6 CPC in a suit instituted for seeking possession and the recovery of mesne profits etc. filed by the respondent-landlord. It came to be so passed, when the suit was listed for consideration at the stage of framing of issues.

The facts and the circumstances, in which, the Trial Court proceeded

in the matter, the impugned order records by itself. It reads as under:

“19.12.2019

Present:— Sh. Akshay Nagar, Ld. Junior advocate for plaintiff.
Sh. S.N.Sharma, Ld counsel for defendant.

Matter is listed today for framing of issues, while reading the file for framing of issues, it is transpired that this is suit for possession and recovery of mesne profits in respect of property bearing number L-387, 2nd floor, Sarita Vihar, New Delhi (hereinafter referred to as suit premises). The said premises was let out to the defendant on 01.05.2017 by executing unregistered lease deed for a period of 11 months at a monthly rent of Rs. 27000/- which expired on 31.03.2018. Another lease deed was also executed on 29.04.2017 wherein the defendant agreed to pay Rs. 14000/- for the use of suit premises and Rs. 13,000/- for fitting and fixtures installed therein.

*In the written statement, the execution of the lease deeds have not been denied therefore, relation of landlord and tenant between the parties is not disputed. The rent is more than of Rs. 3500/- per month which is also admitted. The tenancy has expired by efflux of time. Even otherwise filing of the suit for possession itself is a sufficient notice to quit. Support is taken from **Nopany Investments(P) Ltd Vs Santosh Singh (2008) 2 SCC 728 and Jeevan Diesels and Electricals Ltd Vs M/s Jasbir Singh Chaddha (HUF) 182 (2011) DLT 402.***

There is no defence with respect relief of possession.

In view of clear cut and unequivocal admissions of defendant as discussed above, the suit of the plaintiff is partly decreed under Order 12 Rule 6 CPC qua possession with respect to the suit premises i.e. L-387, 2nd floor, Sarita Vihar, New Delhi. Three months time is given to the defendant to vacate the suit premises from today.

Decreesheet be prepared.

The suit remains for mense profit, hence, following

issues are framed:—

1. Whether the plaintiff is entitled to mense profit if so, at what rate and for what purpose? OPP

2. Relief.

No other issues arisen or pressed for.

Put up for PE on 28.04.2020 with direction to supply the advance copy of the affidavit to the opposite party atleast 15 days before the next date of hearing.”

It emerges from the record that the suit was instituted sometime in August, 2018, and, on being queried during the course of hearing, Mr. Dev, ld. counsel for the appellant, submits that the written statement was filed on 11.07.2019 along with an application seeking condonation of delay. Impugned order is dated 19.12.2019. While there is nothing on record to show as to decision of the Trial Court on the application filed seeking condonation of delay in filing the written statement, a perusal of the impugned order is equally silent as to the reasons for giving three months' time to the defendant to vacate the suit premises from the date of decree. The appellant has now preferred the instant appeal, a day or two before the expiry of indulgence of three months given by the Trial Court. Mr. Dev, ld. counsel for the appellant, when queried as to the reasons given by the appellant to seek indulgence of three months before the Trial Court, he feigns total ignorance. May be, the Trial Court gave such indulgence to obviate hardship of immediate vacation. Let it be assumed so.

In the submissions of Mr. Dev, there were no unequivocal admissions on record to enable the Trial Court to pass the decree of possession under Order XXII Rule 6 CPC. In support of such submissions, he places reliance on ***Jeevan Diesels and Electricals Limited vs. Jasbir Singh Chadha (HUF)***

and Another' (2010) 6 SCC 601 and *Shri Mohan Prasad Jha vs. Shri Shambhu Prasad Singh'* 82 (1999) DLT 281.

On facts, there is no dispute as regards the relationship of the lesser and the lessee amongst the parties. Tenancy premises are also not in dispute. It is also not in dispute that the rent of the subject premises was more than Rs.3,500/- per month and thereby, it did not fall within the domain of Delhi Rent Control Act.

Mr. Dev submits that as per the terms of the lease deed, the tenancy could be extended by the tenant—the appellant to his discretion. To this, it would suffice to observe, the lease deed executed amongst the parties is an unregistered document and therefore, the terms thereof cannot be enforced under law. Not only that, Mr. Dev, during the course of hearing, concedes that the term of lease in any way has expired by efflux of time.

In the given undisputed facts, what for the Trial Court required production of any evidence and not invoke Order XII Rule 6 CPC, Mr. Dev, ld. counsel for the appellant, fails to point out. On the foregoing undisputed facts, a decree for possession was bound to follow, then and there. The impugned order is so indicative as well. The Trial Court noted so, for the delay in passing the decree of possession inasmuch as it came to its notice on the day, the matter was taken up for framing of issues. The facts emerging from the record make it abundantly clear that the appellant on his part has exploited all situations to delay the passing of the decree of possession. Filing of the instant appeal only a day or two before the expiry of three months' indulgence given by the Trial Court, which happened even without calling for an undertaking to vacate and hand over the peaceful and vacant possession of the tenanted premises to the respondent, equally

suggests ulterior motives in so approaching this Court. The judgments *supra* are the cases, where the Court found that the facts emerging from the record were not clear or unambiguous. The facts of the case in hand are however clearly distinguishable. Judgments *supra* are thus of no avail to the appellant.

For the foregoing reasons, the appeal is dismissed with costs of Rs.10,000/- to be deposited with the Delhi High Court Advocates' Welfare Trust and the proof thereof be filed with the Registry, within two weeks from today, failing which, the Registry shall list the instant appeal before the Court.

A. K. CHAWLA, J

MARCH 18, 2020
nn