

Form No. J (1)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Biswajit Basu.

C.O. 2133 OF 2018

PREMLATA CHORORIA
vs.
UMA SHANKAR LADIA & ORS.

For the petitioner: Mr. Saptangshu Basu,
 Mr. Arindam Banerjee,
 Mr. Pranit Bag,
 Mr. Biswajit Kumar,
 Mr. R. Baliyal.

For the opposite parties: Mr. Amal Baran Chatterjee,
 Mr. Bhagbat Chawdhury,
 Mr. Somesh Kumar Ghosh.

Heard on : 08.02.2021

Judgement on : 10.03.2021

Biswajit Basu, J.

1. The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for eviction being Title Suit No. 78 of 2017 and is directed against the part of the Order no. 17 dated April 20, 2018 passed by the learned Civil Judge (Senior Division) at Serampore, District-Hooghly in the said suit. The learned Trial Judge by the said order dated April 20, 2018 has disposed of three applications, out of which two applications were filed by the defendants and one was filed by the plaintiff. The applications filed by the defendants were for amendment of written statement and for an order of injunction which have been allowed by one part of the said order but the application filed by the plaintiff under Order XII Rule 6 of the Code for judgment on admission in the said suit has been dismissed by the learned Trial Judge by the other part of the said order. The plaintiff is challenging the part of the said order whereby her application for judgment on admission has been dismissed.

2. Mr. Saptangshu Basu, learned senior advocate appearing on behalf of the petitioner submits that the rate of rent of the tenancy of the defendants is more than Rs. 3000/- per month, as such the provision of the West Bengal Premises Tenancy Act, 1997 (hereinafter referred to as 'the said Act of 1997') by virtue of Section 3(e)(ii) thereof is not applicable in respect of the suit flat, consequently the tenancy of the defendants is not protected by the said Act of 1997. He further submits that to evict the defendants from the suit flat the plaintiff is required to prove two things; i.e. the relationship of landlord and tenants between her and the defendants and the service of

notice determining the tenancy under Section 106 of the Transfer of Property Act, 1882(hereinafter referred to as the 'said Act of 1882'). Mr. Basu to buttress his said contention places reliance on the decision of the Hon'ble Supreme Court in the case of **PAYAL VISION LIMITED vs. RADHIKA CHOUDHARY** reported in **(2012) 11 SCC 405**.

3. Mr. Basu proceeds to place the facts of the present case to demonstrate that the aforementioned two requirements laid down in the decision of **PAYAL VISION (supra)** have been satisfied. He contends that the defendants, upon admission of their relationship with the plaintiff as tenants and landlord, resorted to the Section 7(1) and Section 7(2) of the said Act of 1997 seeking permission of the Court to deposit current and arrear rent in the suit to the credit of the plaintiff. The said applications although were dismissed as not maintainable but admission made therein regarding the relationship between the parties remain, satisfying the first requirement of judgment on admission in the said suit. He then submits that the averments of paragraph 4 of the plaint that the notice under Section 106 of the Transfer of Property Act, 1882 determining the tenancy was received by the defendants on March 09, 2017, the said averments since have not been denied by the defendants in their written statement, the second requirement for such a judgment in the said suit is also satisfied. Therefore, according to Mr. Basu, the learned Trial Judge has committed a jurisdictional error in not allowing the application of the petitioner under Order XII Rule 6 of the Code.

4. Mr. Amal Baran Chatterjee, learned senior advocate appearing on behalf of the opposite parties in response to the aforesaid submission of Mr. Basu, submits that the Court under Order XII Rule 6 of the Code exercises a discretionary power which cannot be claimed as a matter of right; he takes support of his such submission from the decision of the Hon'ble Supreme Court in the case of **S.M ASIF vs. VIRENDER KUMAR BAJAJ** reported in **(2015)9 SCC 287**, according to him, the learned Trial Judge has not exercised his said discretion in an arbitrary manner in dismissing the said application for judgment on admission warranting interference of this Court in exercise of the jurisdiction under Article 227 of the Constitution of India.

5. Mr. Chatterjee, next places reliance on the decision of the learned Single Judge of this Court in the case of **RAVI UDYOG PRIVATE LIMITED vs. S.G. PROJECTS LTD.** reported in **(2016) 5 CHN 66** to contend that to get a judgment upon admission, the admission has to be such that it would leave no doubt in the mind of the Court with regard to the admission made and it should not be capable of being explained by other evidence. To fit in the said proposition, Mr. Chatterjee refers to some averments of the amended written statement wherein the defendants have raised dispute regarding the validity of the notice and the extent of tenancy vis-à-vis the description of the suit property.

6. Mr. Chatterjee then argues that the expression 'otherwise' appearing in the body of Order XII Rule 6 of the Code should be interpreted *ejusdem generis* to the preceding word 'pleadings'. He suggests that admission can only be gathered from the materials on record which are akin to pleadings. According to him, the applications under Sections 7(1) and 7(2) of the said Act of 1997 being found not maintainable, admission of the defendants in the said applications cannot be looked into for the purpose of a judgment on admission in the said suit. Mr. Chatterjee to fortify his such argument places reliance on the decision of the Hon'ble Supreme Court in the case of **STATE OF KARNATAKA AND OTHERS Vs. KEMPAIAH** reported in **1998(6) SCC 103**. Mr. Chatterjee also refers Maxwell Interpretation of Statutes, 12th Edition to bolster his aforesaid argument on the rule of *ejusdem generis*.

7. Mr. Basu in reply to the submissions of Mr. Chatterjee argues that the defendants in their applications under Section 7(1) and Section 7(2) of the said Act of 1997 have described the extent of their tenancy which matches with the description of the suit flat, therefore, the dispute sought to be raised regarding the extent of their tenancy by amending the written statement cannot dilute the effect of admissions of the defendants made in the said applications.

Heard learned counsel for the parties, perused the materials on record.

8. The issue under consideration demands a closer scrutiny of the position of law for pronouncement of a judgment on admission under Order XII Rule 6 of the Code. The Hon'ble Supreme Court in the case of **KARAM KAPAH AND ORS. vs. M/S LAL CHAND PUBLIC CHARITABLE TRUST AND ANR.** reported in **AIR 2010 (SC) 2077** had the occasion to consider the scope of Order XII Rule 6 of the Code after its amendment by the Code of Civil Procedure (Amendment) Act, 1976. In the said judgment it has been held that the principles behind Order XII Rule 6 are to give the plaintiff a right to get a speedy judgment and such judgment can be pronounced by the Court not only on the application by a party but also on its own motion, such rule of admissions can be inferred from the facts and circumstances of the case and admissions in answer to interrogatories are also covered under this rule. Paragraphs 46, 48 and 50 of the said Report being relevant are quoted below:

“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 Jesel, the Master of Rolls, in Thorp v. 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.

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.

50. Keeping the width of this provision in mind this Court held that under this rule admissions can be inferred from facts and circumstances of the case [See Charanjit Lal Mehra and others v. Kamal Saroj Mahajan (Smt.) and another, (2005) 11 SCC 279 at page 285 (para8) : (AIR 2005 SC 2765 : 2005 AIR SCW 1697). Admissions in answer to interrogatories are also covered under this Rule [See Mulla's Commentary on the Code, 16th Edition, Volume II, page 2177]"

9. Let me now examine whether the word 'otherwise' should be construed *ejusdem generis* to preceding word 'pleadings' as suggested by Mr. Chatterjee, learned counsel for the opposite parties. The rule of *ejusdem generis* is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary. (See **KOCHAUNI vs. STATES OF MADRAS & KERALA** reported in **AIR 1960 (SC)1080** at page 1103). Therefore, this rule has to be applied with care and caution.

"...where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. As stated by Lord Scarman; "If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfill the purpose of the statute. The rule like many other rules of statutory interpretation, is a useful servant but a bad master." (Principles of Statutory Interpretation, 6th Edition, Justice G.P. Singh).

10. The Hon'ble Supreme Court in the case of **UTTAM SINGH DUGGAL & CO. LTD. vs. UNITED BANK OF INDIA AND OTHERS** reported in **AIR 2000 (SC) 2740** held that the Court should not unduly narrow down the application of Order XII Rule 6 of the Code as the object of the said provision is to enable a party to obtain speedy judgment and rejected the contention that the expression "either in pleadings or otherwise" should be interpreted *ejusdem generis*. The Hon'ble Supreme Court in the case of **KARAM KAPAHI(supra)** approved the said view of the case of **UTTAM DUGGAL(supra)**. The case of Karam Kapahi arose from a suit for possession; in such a suit the defendant-Club filed an application under Section 114 of the Transfer of Property Act, 1882 which was held to be an application coming within the sweep of the expression 'otherwise'. Paragraph 58 of the case of **KARAM KAPAHI (supra)** is quoted below for ready reference:

"58. Therefore, in the instant case even though statement made by the Club in its petition under Section 114 of the Transfer of Property Act does not come within the definition of the word 'pleading' under Order 6 Rule 1 of the Code, but in Order 12 Rule 6 of the Code, the word 'pleading' has been suffixed by the expression 'or otherwise'. Therefore, a wider interpretation of the word 'pleading' is warranted in understanding the implication of this rule. Thus the stand of the Club in its petition under Section 114 of the Transfer of Property Act can be considered by the Court in pronouncing judgment on admission under Order 12 Rule 6 in view of clear words 'pleading or otherwise' used therein especially when that petition was in the suit filed by the Trust."

11. Any interpretation to narrow down the application of provision of Order XII Rule 6 of the Code runs counter to the object sought to be achieved by the amendment of the said provision, this Court, therefore, is unable to

convince itself to accept the interpretation of the phrase 'otherwise' in the manner as suggested by Mr. Chatterjee. The decision of the Hon'ble Supreme Court in the case of **STATE OF KARNATAKA AND OTHERS vs. KEMPAIAH** reported in **1998(6) SCC 103** relied on by Mr. Chatterjee in the context of this case is misplaced.

12. The quality of admission which the provision of Order XII Rule 6 of the Code demands is well settled by different judicial pronouncements. The admission must be clear, unequivocal and unambiguous(See **KORAMALL RAMBALLAV vs. MONGILAL DALIMCHAND** reported at **23 CWN 1017** and **J.C. GALSTAUN vs. E.D. SASSOON & CO.** reported at **27 CWN 783**). The learned Single Judge of this Court in the decision reported in **2016(5) CHN 66 (supra)** has held that the admission has to be such that it would leave no doubt in the mind of the Court with regard to the admission made, in my opinion this is the correct test to ascertain the quality of admission which the provision of Order XII Rule 6 of the Code demands for a judgment on admission.

13. The power of the Court under Order XII Rule 6 of the Code to pronounce a judgment on admission discretionary which the plaintiff cannot claim as a matter of right, as has been held by the Hon'ble Supreme Court in the case of **S.M. ASIF (supra)** relied on by Mr. Chatterjee. No doubt in an appropriate case, a party on the admission of the other party can press for judgment on admission as a matter of legal right as has been held by the

Hon'ble Supreme Court in the case of **KARAM KAPAH** (**supra**). Nonetheless whether or not there is a clear, unequivocal and unambiguous admission by one party of the case of other party is essentially a question of fact and the decision of this question depends on the facts of the case, such question cannot be decided on the basis of a judicial precedent. In this context it is profitable to quote relevant extracts from paragraph 10 of the decision of the Hon'ble Supreme Court in the case of **JEEVAN DIESELS AND ELECTRICALS LIMITED vs. JASBIR SINGH CHADHA (HUF) AND ANOTHER** reported in **(2010) 6 SCC 601**.

“10....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 decision of this question depends upon the facts of the case. This question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent...”

14. In the light of the position of law on the subject discussed above let me now scrutinize the pleadings of the defendants and other materials available on records to find out whether there are admissions of the defendants befitting to attract of the provision of Order XII Rule 6 of the Code for the pronouncement of a judgment on admission.

15. Mr. Basu learned advocate for the petitioner to bring home the case of the plaintiff heavily relies on the case of **PAYAL VISION LIMITED(supra)**, in paragraph 7 of the said decision the Hon'ble Supreme Court has held that to evict a tenant whose tenancy is not protected under the provisions of Rent

Control Act, the plaintiff is required to establish the existence of jural relationship of landlord and tenant between the parties and termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the said Act of 1882 and so long these aspects are not in dispute, the Court can pass a decree in terms of Order XII Rule 6 of the Code. The said paragraph of the said decision is quoted below for better appreciation:-

“7. 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 laps of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the Court can pass a decree in terms of Order 12 Rule 6 CPC.”

16. In the present case the plaintiff in paragraph 4 of the plaint has stated that the notice terminating the tenancy was served upon the opposite parties on March 07, 2017 the said paragraph of the plaint is quoted below for ready reference:-

“4. The tenancy is governed by the Transfer of Property Act, 1882. The plaintiff has terminated the tenancy of the defendant by a notice dated 7th March, 2017, a copy whereof is annexed hereto and marked with the letter “A”. The said notice has been received on 9th March, 2017 and has therefore taken effect on 24th March, 2017. Copies of the postal receipt and copies of the Tracking Report evidencing the aforesaid facts, are annexed hereto and collectively marked with the letter “B”.”

17. The defendants in their written statement although have challenged the validity of the notice to quit on the grounds that the plaintiff being one of the co-owners of the suit flat cannot issue the said notice alone and time for vacating the suit flat as stated in the said notice is not according to mandatory provision. The said grounds of challenge to the said notice are not sustainable inasmuch as the suit was filed after the expiry of the period mentioned in the said notice and by virtue of sub-section (3) thereof the shortfall of period specified under sub-section(1) of Section 106 of the said Act of 1882 will not invalidate the said notice and the right of one of the co-owners to issue notice to quit for self and on behalf of other co-owners is well recognized. The defendants, however, have not denied the service of the said notice upon them.

18. Turing to the investigation into the question as to the existence of jural relationship between the plaintiff and defendants of landlord and tenants, it appears that the defendants in their applications under Sections 7(1) and 7(2) of the said Act of 1997 prayed for permission of the learned Trial Judge to deposit the current and arrear rent to the credit of the plaintiff. The said prayer of the defendants clearly signifies their admission of the existence of the relationship of landlord and tenants between the plaintiff and the defendants. The said admissions will not be wiped out from the records for dismissal of those applications as not maintainable and the admissions made therein can very well be looked into for the purpose of judgment on admission as those admissions are coming within the sweep of

the connotation 'otherwise' appearing in the body of the provision of Order XII Rule 6 of the Code.

19. The defendants in their aforesaid applications under Sections 7(1) and 7(2) of the said Act of 1997 although have admitted the extent of their tenancy but such admissions become disputed as soon as the defendants in their amended written statement raise dispute in this regard. The relevant paragraphs of the amended written statement are reproduced below to appreciate the extent of the said dispute:-

*“19(a). That from the Title Deed of the plaintiff it would be evident the constructed area of the ground floor is 874 Sft. Which is butted and bounded by the followings: (as mentioned in Registered deed No. 01423 of 2012 lying in the name of the plaintiff and her husband) : **On the South:** Snehasis Bose & Others, **On the East:** House of Bapi Biswas. **On the West:** 6 feet wide common passage. **On the North:** House of Sri Rabindra Nath Saha. In the aforesaid context it is to be noted that physical and actual measurement of the **constructed area or portion of the suit holding is 1344 Sft yet in the title deed of the plaintiff and her husband the total ground floor constructed area has been mentioned as 8744 sft. and First floor has been mentioned as 398 sft.** So, ownership of the property of the plaintiff in respect of the eviction is prayed is defective one.*

19(b). That in the schedule of the plaint wherefrom the eviction has been prayed it is seen the premises in question is measuring 800 sft, and butted and bounded as follows:

***On the North:** By a flat of the plaintiff. **On the South:** by a common passage. **On the East:** By a common passage. **On the West:** By a flat of the plaintiff. The said description is vague, wrong and indefinite.*

19(c). That although eviction of the defendants has been prayed in respect of the

premises measuring 800 sft lying on the Ground floor of the suit holding yet the defendant since at the time of induction as tenant in the year 2013 is occupying only in respect of 434 sft. carpet area (wall to wall measurement) and residing with his family member till today. Within the said carpet area one Bed room measuring (13' X 12') 156 sft. One Bed room measuring (14' X 9') 126 sft. One Kitchen measuring (8' X 6') 48 sft. One privy/bathroom measuring (8' X 4') 32 sft. being total area 434 sfta.p.

That the plaintiff in her plaint has suppressed material fact that up to the period 2017 there had been other two tenants namely Mr. MukheshSarma (and Mr. Samdhar Singh who had been in possession in their respective portion on the ground floor of the suit holding. Had it been so, it is quite impossible for the defendants to occupy the area of the ground floor measuring 800 sft. as premises tenant in the suit property since 2013."

20. The admission of the defendants made in the applications under Section 7(1) and Section 7(2) of the said Act of 1997 regarding the extent of their tenancy cannot override the dispute raised by them in their pleading in this regard and in view of such dispute being raised by the defendants in their pleading, the quality of the admission required to pronounce a judgment on admission under Order XII Rule 6 of the Code gets affected.

21. It has already been discussed above that whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. The dispute with regard to the extent of the tenancy of the defendants being relevant in deciding the dispute between the parties, the said issue needs to be resolved before a judgment in the suit is passed and such dispute can

only be resolved in course of the trial of the suit on the basis of the evidences to be adduced by the parties.

This Court, therefore, for the reasons discussed above does not find any reason to interfere with the order impugned C.O. 2133 of 2018 is dismissed. No order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with the all requisite formalities.

(BISWAJIT BASU, J.)

Later,

After the pronouncement of judgment Mr. Saptanshu Basu, learned senior advocate appearing on behalf of the petitioner prays that the hearing of the suit be expedited.

The connected suit is a suit for eviction, the plaintiff of such a suit can reasonably expect its logical conclusion within a reasonable time. The suit is pending since 2017. The learned Trial Judge is, therefore, requested to make all endeavour to dispose of the said suit as expeditiously as possible, preferably within a period of six months from the date of communication of this order and in doing so the learned Trial Judge shall not grant any unnecessary adjournment to either of the parties.

(BISWAJIT BASU, J.)

