

OD-7

IA No.GA/1/2020 (Old No.GA/513/2020)
IN
CS/74/2018

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE

SHIVANI PROPERTIES PVT. LTD.
Versus
RAMA SHANKAR PANDEY AND ORS.

BEFORE:

The Hon'ble JUSTICE MOUSHUMI BHATTACHARYA

Date : 26th March, 2021.

Appearance:

Mr. Krishnaraj Thakker, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Suman Majumder, Adv.
..for the petitioner.

Mr. Pratip Mukherjee, Adv.
Mr. Purusattam Basak, Adv.
..for the respondents.

The Court: The plaintiff has applied for a decree in a suit for eviction based on certain admissions made by the defendants/respondents in the written statement. The application has been made under Order 12 Rule 06 of The Code of Civil Procedure, 1908 - Judgment on Admissions.

The present suit is for eviction and *mesne* profits wherein the plaintiff has also sought recovery of vacant and *khas* possession of the suit premises located at 5, Kiran Shankar Roy Road, Kolkata. The plaintiff is the present landlord of the suit premises and the defendant nos. 2 and 3, being the sons of the

defendant no. 1 are in occupation of two rooms and a terrace of the suit premises. The defendants claim to be tenants of the premises in question.

According to Mr. K. Thakkar, learned Sr. Counsel appearing on behalf of the plaintiff/petitioner, there are three admissions in the written statement filed by the defendants to the effect that the plaintiff is the present landlord of the premises in question; that the recorded tenant and predecessor of the defendants, one Satya Narayan Pandey passed away on 2nd February, 1997 and that on the demise of said Satya Narayan Pandey (the recorded tenant), the plaintiff has not entered into any fresh tenancy agreement with the defendants. Counsel relies on Section 2(g) of the West Bengal Premises Tenancy Act, 1997 to contend that the defendants in the capacity of legal heirs to defendant no.1 are not entitled to remain in possession of the premises on expiry of five years from the date of demise of the recorded tenant. Counsel further submits that in the present case, the 1997 Act will apply since the proceedings instituted under the West Bengal Premises Tenancy Act, 1956 and those instituted prior to the commencement of the 1997 Act will be guided by the 1956 Act. Counsel relies on *Sri. Sushil Kumar Jain vs. Pilani Properties Limited*; (2018) 1 CHN 396 in this context. Counsel relies on *Payal Vision Limited vs Radhika Choudhary*; (2012)11 SCC 405 on the proposition that in a suit for recovery of possession from a tenant whose tenancy is not protected, the plaintiff landlord has only to establish the existence of a jural relationship between the landlord and the tenant and the

termination of tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act.

Charanjit Lal Mehra vs Kamal Saroj Mahajan (SMT); (2005)11 SCC 279 has been cited by the petitioner to show that Order 12 Rule 6 of the CPC has been enacted for the purpose of expediting the trial if there is any admission on the part of the defendants or an admission which can be inferred from the facts of the case. *Uttam Singh Duggal & Co. Ltd. vs United Bank of India; (2000) 7 SCC 120* emphasizes that the object of Order 12 Rule 6 is to enable a party to obtain speedy judgment. Counsel also relies on *Atma Ram Properties (P) Ltd. vs Pal Properties (India) Pvt. Ltd.; 2002 (62) DRJ 623* on the proposition that a purely legal objection which does not require any evidence will not stand in the way of the court pronouncing a decree under Order 12 Rule 6 of the CPC.

Mr. Pratip Mukherjee, learned counsel appearing for defendants/respondents submits that the present suit for recovery of possession from a trespasser would be guided by the provisions of the Specific Relief Act, 1965 and the Limitation Act, 1963. Counsel further raises a preliminary objection to the jurisdiction of this Court to try and determine the suit and submits that the City Civil Court would be the appropriate court taking into consideration the pecuniary jurisdiction of this Court. It is submitted that since the question of pecuniary jurisdiction is necessary to be adjudicated, the same must be proved on evidence to establish the fact that the plaintiff has not exaggerated the reliefs claimed in the suit for the purpose of inflating the

valuation and attracting the jurisdiction of this Court. Counsel relies on the following decisions: *Balraj Taneja vs. Sunil Madan*; (1999) 8 SCC 396, *S.M. Asif vs. Virender Kumar Bajaj* (2015) 9 SCC 287, *Raj Kumar Chawla vs Lucas Indian Services*; 2006 SCC online Del 490, *Inder Mohan Singh vs Sube Singh* in RSA 160 of 2013 on the principle of Order 12 Rule 6 of the CPC and particularly where it would not be appropriate for the court to exercise discretion under Order 12 Rule 6 of the CPC when the defendant has raised an objection which goes to the root of the case.

The primary issue for consideration is whether admissions of fact have been made by the defendants in the pleadings before this court or otherwise which would call for pronouncing judgment on the basis of the admissions made. As is evident from the written statement and affidavit-in-opposition filed by the defendants, the following admissions have been made by the defendants;

(i) The plaintiff is the present landlord and has refused to accept the rent from the defendants following which the defendants are depositing rent before the Rent Controller every month to the credit of the landlord (Paragraph 4(f) of the W.S.)

(ii) The present defendants are the successors of the original tenant and after the death of the original tenant, the defendants have requested for change of the name in the tenancy and also for the plaintiff to accept the rent from the defendants which the plaintiff has refused to do. (Paragraph 4(m) of the Written Statement)

(iii) The original tenant, Mr. Satya Narayan Pandey passed away on 2nd January, 1997 (Paragraph 4(c) and 4(d) of the Written Statement). Thereafter, the plaintiff has not entered into a fresh tenancy agreement with the defendants and has refused to accept rent from the defendants. (Paragraph 4(f), 4(h) of the Written Statement)

Section 2(g) of The West Bengal Premises Tenancy Act, 1997 which defines “*tenant*” makes it clear that a tenant would include, in the event of death of any tenant, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, the spouse, son, daughter, parent and the widow of the pre-deceased son of the tenant, who were ordinarily living with the tenant up to the date of death of the tenant, as family members and were dependent on him and who do not own or occupy any residential premises, etc. The first proviso to Section 2(g) makes an exception to the time limit of five years for the spouse of the tenant who was ordinarily living with the tenant up to his death together with certain other conditions while the second proviso deals with the son, daughter, parent or the widow of the pre-deceased son of the tenant who were ordinarily residing with the tenant in the same premises up to the date of death of the tenant as a family member, etc., and shall have a right of preference for tenancy if a fresh agreement is executed in respect of the said premises.

The admissions made by the defendants in the pleadings in the context of Section 2(g) of the 1997 Act makes it clear that the defendants are not entitled to

remain in possession of the suit premises after expiry of five years from the date of death of Mr. Satya Narayan Pandey on 2nd February, 1997. Five years from the date of death would be 3rd February, 2002, after which the defendants, being the successors in interest/legal heirs of the original tenant, Mr. Satya Narayan Pandey lost the right to remain in possession of the said premises. The defendants have not proved any of the conditions mentioned in Section 2(g) to get the benefit of either five years from the date of death of the original tenant or the relaxation thereof under the first or second proviso to Section 2(g). The Section mentions several factual considerations which may be taken into account for a person to be recognised as a tenant for a period of five years from the date of death of the original tenant or the date of coming into force of the 1997 Act, whichever is later. The section reiterates that recognition of a person as a tenant after the death of the original tenant would not, however, exceed five years from the date of death of the original tenant or from the date of coming into force of the 1997 Act, whichever is earlier.

The objection raised on behalf of the defendants to the above contention is that the suit would be governed by The West Bengal Premises Tenancy Act, 1956 and not the 1997 Act. This objection must be rejected since the 1956 Act stood repealed by Section 45 of the 1997 Act which only made an exception for proceedings instituted under the 1956 Act which were prior to the commencement of the 1997 Act. This position in law has been reiterated by a decision of a Division Bench of this court in *Sri Sushil Kumar Jain* where the

Court clarified the intention of Section 2(g) of the 1997 Act as including only the heirs of the original tenant who were dependent on him and were residing with him at the time of his death, as tenants for the purposes of Section 2(g) of the Act. The Court was of the view that the umbrella of protection would be removed with the conclusion of the fifth year from the date of death of the original tenant in case the original tenant died after the 1997 Act came into effect. More significantly, the Division Bench was of the view that merely because the tenancy has been created prior to the 1997 Act, it cannot be said that the protection enjoyed under the 1956 Act would continue even after the 1997 Act came into operation. Even if the relevant date is taken to be 28th December, 1998 when The West Bengal Premises Tenancy Act, 1997 was notified, five years from that date would be 29th December, 2003 after which the defendants lost their right to remain in possession of the subject premises. Hence, on the strength of the specific admissions made by the defendants in the written statement and affidavit in opposition, the unmistakable conclusion is that the defendants are not legally entitled to remain in possession of the subject premises after 29th December, 2003.

The objection with regard to the suit for recovery of possession being barred by reason of Article 65 of the Limitation Act, 1963 has to be seen in the factual context of the present case. Article 65 which provides for a limitation of 12 years for possession of immovable property or any interest based on title applies when the defendant claims adverse possession and such case has been made out in the written statement. In the present case, the defendants have

admitted the plaintiff as the present landlord and made several statements to the effect that the defendants seek to tender the rent for occupying the premises. Article 67 of the Limitation Act, relating to a suit by a landlord to recover possession from a tenant, is also not applicable in the present case since the plaintiff has not accepted the defendants as its tenants which would also be apparent from the statements made in the written statement that the plaintiff has not entered into a fresh tenancy agreement with the defendants and has also refused to accept rents from the defendants after the demise of the recorded tenant, Satya Narayan Pandey. In any event Section 22 of the Limitation Act – *“Continuing breaches and torts”* - is applicable to a case of a continuing tort where a fresh period of limitation begins to run at every moment of the time during which the breach or tort continues. Since the 1997 Act does not provide for an automatic devolution of tenancy on any person who continues being in possession after the death of a tenant, the defendants must prove that the conditions for the defendants to be recognized as tenants after the death of the original tenant satisfies the requirement of Section 2(g) of the 1997 Act which case has not been made out by the defendants. In that perspective, the defendants have been reduced to trespassers and everyday of wrongful possession would give rise to a fresh period of limitation under Section 22 of the Limitation Act.

The contention with regard to the suit being incorrectly valued must be noticed in the context that the only objection taken by the defendants to such is

a solitary line in paragraph 7 of the written statement to the effect that the suit is not maintainable for being under-valued and should be dismissed for that reason. The defendants have not explained the said statement in any other pleading. Paragraph 11 of the plaint has determined the value of the suit taking into account the value of the subject property upon which maximum court-fees have been paid. There is nothing on record to show that such valuation is either abnormally inflated or reduced for any unfair advantage to the plaintiffs. Since the valuation of the suit in the aggregate is Rs.29,50,000/-, both the City Civil Court as well as this court have concurrent jurisdiction and the plaintiff would therefore have the option to choose its court.

A case under Order XII Rule 6 of The Code of Civil Procedure presumes that the factual admissions which have been made by a party in its pleadings or in writing or by way of oral submissions or otherwise, are such that the Court would be persuaded to pronounce judgment without having to wait for the adjudication on the other issues to be completed.

Payal Vision was concerned with a suit for recovery of possession from a tenant where the tenancy was not protected under the provisions of the Rent Control Act. The Supreme Court held that in such a case, all that the plaintiff/landlord is required to establish is the existence of a jural relationship of landlord and tenant between the parties and that the tenancy had been terminated either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. The Supreme Court was of the view that once these two aspects have been admitted, the Court can proceed to pass a

decree in terms of Order XII Rule 6 of the CPC. The Supreme Court further opined that Order XII Rule 6 empowers the Court to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. In *Atma Ram Properties* the Delhi High Court held that there was no requirement for any evidence raised by the defendants since the plaintiff has been able to establish the three ingredients for passing a decree for possession. The Court further held that purely legal questions may not require any evidence and the Court would not be deterred from passing a decree on the issues where a clear admission has been made by the defendant

The decisions relied upon by learned counsel for the defendants, namely, *Raj Kumar Chawla*, *S. M. Asif* and *Balraj Taneja* are on the principles which are relevant for an application under Order XII Rule 6. Each of these decisions have to be seen in their particular factual context in which the admission was held to be not sufficient. In *Inder Mohan Singh* the Delhi High Court proceeded on the basis that the particular questions involved could not be disposed of without recording of evidence and that the concerned party would have to prove his case before the Court.

The power of a Court to pronounce judgment on admissions has to be seen in the particular facts of this case and the decisions shown cannot come to the assistance of the parties before the Court unless the decisions are substantially similar to the facts of the present case. Admission, by its very definition, is relevant to the factual context in which the admission has been made. There cannot hence be any uniform rule save and except that the admission must be

clear, unequivocal and completely relevant to the issue on which the Court can pronounce judgment without going into the rigours of a trial. The plea with regard to limitation and pecuniary valuation are issues which do not call for evidence. The issue with regard to whether the 1997 Act will apply in the present case has already been settled in *Sri Sushil Kumar Jain* as discussed above.

Since this Court is convinced that there has indeed been clear and unequivocal admissions on the part of the defendants the issues which form the basis of the plaintiff's getting a decree for eviction against the defendants, there is no remaining fetter which can deter this Court from pronouncing judgment and decree as prayed for.

GA/1/2020 is accordingly allowed in terms of prayer (a). There shall be a decree as prayed for in CS/74/2018, namely, decree for eviction and recovery of vacant and peaceful possession of the suit premises against the defendants and their family members, men, servants etc., on the basis of the admissions made by the defendants in the written statement.

(MOUSHUMI BHATTACHARYA, J.)