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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 7th October, 2021

+ **RSA 12/2020**

KARAN DEM

..... Appellant

Through: Mr. Rajesh Kumar Sharma, Advocate.
versus

JYOTI GANDHI & ORS

..... Respondents

Through: Mr. Suresh Agarwal, Advocate
Mr. R.S.Rai, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present second appeal arises out of the impugned order dated 28th November, 2019, passed by the Id. ADJ-04, East District, Karkardooma Courts, New Delhi, by which the appeal of the tenant against the order dated 1st June, 2019 passed by the Id. Civil Judge, East, has been dismissed.
3. The dispute arises out a civil suit bearing ***Suit No. 1064/18*** titled ***Jyoti Gandhi and Ors. v. Karan Dem***, which was filed by the Respondents herein/ Plaintiffs (*hereinafter "Plaintiffs"*) -Smt. Jyoti Gandhi, Ruchi Arya and Riya Chawla, against their tenant -Mr. Karan Dem, who is the Appellant herein/Defendant (*hereinafter, "Defendant"*) on the ground that the Plaintiffs are the absolute owners of property bearing Flat No. 153-B, Third Floor, South Anarkali, Delhi.
4. The case of the Plaintiffs in the suit was that a rent agreement was executed on 2nd January, 2016, by which the property in question was given out on rent, for a monthly rental amount of Rs. 17,000/- to the Defendant. According to the Plaintiffs, the tenant did not pay the regular rent amounts,

and in any case, vide notice dated 20th September, 2018, the tenancy was terminated by the Plaintiffs. A reply was also sent to the said notice by the Defendant- tenant, however, he did not agree to vacate the property. The same led to the filing of a suit for recovery of possession and recovery of rent/damages before the Trial Court. The prayers in the plaint in **Suit No. 1064/18** are as under:

“A. Pass a decree of recovery of possession in favour of the plaintiff and against the defendant in respect of suit property/Flat bearing No.-153-B, IIIrd Floor, Opposite Punjabi Dhaba, South Anarkali Extn. Delhi, which is specifically shown in red colour in the annexed site plan.

B. Pass a decree of recovery of rent @ Rs.17000/- per month since July, 2018 to October, 2018 (i.e. $17000 \times 4 = 68000$).

C. Pass decree of damages @ Rs. 500/- per day w.e.f. 1/10/2018 till vacation of the suit property.

C. Pass any other or further order as this Hon'ble court may deem fit and proper in the fact and circumstances of the case.”

5. In response to the plaint, written statement was filed by the tenant. Post the filing of the said written statement, the learned Civil Judge, vide order dated 1st June, 2019, held that there are clear admissions by the tenant in its written statement, and thus the suit was decreed by invoking Order XII Rule 6 CPC. The said judgment of the Civil Judge, has been upheld in appeal by the Id. ADJ vide the impugned order dated 28th November 2019.

6. Mr. Sharma, Id. counsel for the Defendant, has entered appearance today and has made his submissions. Mr. Suresh Agarwal and Mr. Rai have appeared for the Plaintiffs. Both the Id. counsels have been heard.

7. Mr. Sharma appearing for the Defendant- tenant, submits that the tenant's father is unwell and that is the reason why he could not appear on the previous occasion. He submits that the questions of law that arise in the present second appeal, are –

- that the rent Agreement which has been relied upon by the Plaintiffs before the Trial Court as well as the First Appellate Court, is an unregistered Agreement, and no stamp duty has been paid in respect thereof. Thus, according to Id. Counsel, the rent Agreement cannot be relied upon by the Plaintiffs;
- that the suit for possession ought to have been properly valued, and proper court fee has also not been deposited by the Plaintiffs;
- that the ownership and title of the Plaintiffs is also disputed. and the Plaintiffs cannot be permitted to rely upon unregistered documents in view of Section 49 of the Registration Act to claim recovery of possession.

8. On behalf of the Plaintiffs, it is submitted by both the Id. Counsels as under:

- that the tenant has admitted the fact that he had taken the premises on rent from the Plaintiffs;
- that he has also admitted that he was paying rent to the Plaintiffs amounting to Rs.17,000/- per month;
- when these two facts are clearly admitted on record, the order passed by the Id. Civil Judge, based on these admissions is completely justified;
- that since 2019, i.e., when the eviction order was passed by the

- ld. Civil Judge, the tenant has not been paying any rent;
- that, post the passing of the decree by the ld. Civil Judge on 1st June 2019, the landlord is entitled to recover market rent.

9. Heard ld. Counsels for the parties and perused the record, in respect of the determination of substantial questions of law, if any, in the present appeal.

10. In the plaint filed before the Trial Court, the Plaintiffs have pleaded as under:

“1. That the plaintiff is the absolute owner of built-up Flat No.153-B, 3rd Floor, South Anarkali, Delhi, and defendant is tenant under the tenancy of the plaintiff for a monthly rent of Rs. 17,000/- per month excluding other charges and the defendant have taken entire Flat on the 3rd Floor, for residential purposes, in property bearing No. 153-B, 3rd Floor, South Anarkali, Delhi-92, and in this regard a Rent Agreement was voluntarily executed between the defendant and the plaintiff, which bears the signature of the defendant and the plaintiff on 2/1/2016, which was executed for the period of 11 months w.e.f. 1/1/2016.

2. That though, the defendant has been paying the rent to the plaintiff off and on and lastly you have made the payment of rent since June, 2018.

3. That the defendant is a chronic defaulter in making the payment of rent and the defendant is in the arrears of rent since July, 2018 onwards till date at the rate of Rs.17000/- per month besides electricity and water charges and the defendant has neither paid nor tendered the arrears of rent in-spite of repeated demands of plaintiff, but the defendant is neither paying the rent nor electricity and water charges, which is being paid to the concerned authority by the plaintiff in order to avoid disconnection.”

11. From a perusal of the plaint, it is clear that the Plaintiffs have relied upon the rent Agreement dated 2nd January, 2016, which was for a period of 11 months and the monthly rent was Rs.17,000/-. The Plaintiffs also state in the Plaint that the Defendant-tenant had not made payments of rent since June, 2018, and thus the Plaintiffs prayed for recovery of possession.

12. In the written statement before the Trial Court, the Defendant- tenant, has replied to above paragraphs in the plaint, as under:

“1. That the contents of para no.1 of suit are need no reply being matter of record. However, it is submitted that plaintiffs have concealed material fact that at the time of execution of lease deed, the plaintiffs have received Rs.50,000/- in cash from the defendant as security amount. It is further submitted that Mr. Bharat Bhushan and Mr. Babloo are the only person who keeps interaction with the defendant and collect rent regularly from the defendant.

2. That the contents of para no.2 of the suit are wrong and denied. It is denied that though, the defendant has been paying the rent to the plaintiff off and on and lastly the defendant has made the payment of rent since June, 2018. It is submitted that the defendant paid the rent regularly and the defendant paid the rent of the said tenanted premises till September 2018.

3. That the contents of para no. 3 of the suit are wrong and denied. It is denied that the defendant is a chronic defaulter in making the payment of rent and the defendant is in the arrears of rent since July, 2018 onwards till date at the. rate of Rs.17,000/- per month besides electricity and water charges and the defendant have neither paid nor tendered the arrears of rent in-spite of repeated demands of the plaintiff but the defendant is neither paying the rent nor electricity and water charges, which is being paid to the

concerned authority by the plaintiff in order to avoid disconnection. It is submitted that the defendant is a good pay master of rent and he always paid the rent to the plaintiffs without any failure and there is no due of rent against the defendant in respect of tenanted premises but despite best repeated requests and demands, the plaintiffs did not issue any rent receipt against the paid rent to the plaintiffs. It is further submitted that the plaintiffs wants to dispossess the defendant from the tenanted premises by making false and fictitious ground and in this respect, the plaintiff harassed and humiliated the defendant and they are using every ill tactics to get vacated the said tenanted premises from the defendant. It is further submitted that there is no due of electricity and water charges.”

13. A perusal of the para wise reply to the plaint, in the written statement, shows that the tenant has categorically stated that paragraph- 1 of the plaint, which has been extracted above in, *'is a matter of record'*. This is a categorical admission of all the contents of paragraph 1 of the Plaint. Thus, the rent Agreement stands admitted by the tenant- Defendant. The tenant has also claimed in paragraph 1 of the written statement that he had paid a sum of Rs. 50,000/-, in cash as security amount. This is clearly evidence of the fact that the rent agreement was entered into by him. Further, the case of the Defendant is that the rent has been paid by him, regularly till September, 2018 and the amount of Rs.17,000/- per month, as the rental amount, is also not specifically denied.

14. Apart from the pleadings in the suit itself, a perusal of the legal notice dated 20th September, and the reply thereto by the tenant, also shows that the tenant admits the rent agreement. In response to the legal notice which was issued by the Plaintiffs, vide reply dated 11th October, 2018, the tenant states

as under:

“1. That the contents of para no. 1 of your legal notice need no reply being matter of record. However, it is submitted that your clients have concealed material fact that at the time of execution of lease deed, your clients have received Rs.50,000/- in cash from my client as security amount. It is further submitted that Mr. Bharat Bhushan and Mr. Babloo are the only person who keeps interaction with my client and collect rent regularly from my client.

2. That the contents of para no. 2 of your legal notice wrong and denied. It is denied that though, my client has been paying the rent to your client off and on and lastly my client has made the payment of rent since June, 2018. It is submitted that my client paid the rent regularly and my client paid the rent of the said tenanted premises till September 2018.

3. That the contents of para 3 of your notice is wrong and denied. It is denied that my client is a chronic defaulter in making the payment of rent and my client is in the arrears of rent since July, 2018 onwards till date at the rate of Rs.17,000/- per month besides electricity and water charges and my client have neither paid nor tendered the arrears of rent in spite of repeated demands of your client but my client is neither paying the rent nor electricity and water charges, which is being paid to the concerned authority by your client in order to avoid disconnection. It is submitted that my client is a good pay master of rent and he always paid the rent to your client without any failure and there is no due of rent against my client in respect of tenanted premises but despite best repeated requests and demands, your client did not issue any rent receipt against the paid rent to your client. It' is further submitted that your client wants to dispossess my client from the tenanted

premises without due process of law by making false and fictitious ground like present notice and in this respect, your client harassed and humiliated my client and they are using every ill tactics to get vacated the said tenanted premises from my client. It is further submitted that there is no due of electricity and water charges.”

15. The above para-wise reply to the legal notice, clearly shows that the relationship of landlord-tenant is admitted by the Defendant. Further, the rent Agreement being only for a period of 11 months, did not require registration in law. The Supreme Court in **Satish Kumar v. Zarif Ahmed and ors. (1997) 3 SCC 679** has settled the said position of law and held:

“7. The question, therefore, that arises is: whether a lease of immovable property from month to month or for 11 months is a compulsorily registerable document, though it was reduced to writing as an instrument defined under Section 2(14) of the Stamp Act? A conjoint reading of the q first part of Section 107 read with Section 17(1)(d) of the Registration Act as extracted hereinbefore, does indicate that a lease of immovable property from year to year, on for any term exceeding one year or reserving a yearly rent should be made only by a registered instrument and all other instruments, though reduced to writing and possession is delivered thereunder, are not compulsorily registerable instruments.

8. Section 49 of the Registration Act prohibits receiving in evidence certain types of documents. It reads as under:

No document required by Section 17 or by any provision of the Transfer of Property Act, 1882 to be registered shall

(a) affect any immovable property comprised therein, or
(c) be received as evidence of any transaction affecting such property or conferring such power;
unless it has been registered:

9. *The proviso is not applicable to the facts in this case and, therefore, it is not necessary to look into the exceptions engrafted vis-a-vis receipt of a documents comprising of three circumstances mentioned therein, namely, unregistered document used for enforcement of specific performance under the Specific Relief Act or used as an evidence or part performance of the contract under Section 53-A of the TP Act or using evidence for collateral transactions. The combined effect of all the provisions is that an unregistered lease deed executed from month to months, for a period not exceeding 11 months, though reduced to writing and possession is delivered thereunder to a tenant, is not a compulsorily registerable instrument and, therefore, the prohibition contained in Section 49 of the Registration Act is inapplicable. Therefore, the document is admissible in evidence to consider the effect of the immovable property contained therein or to receive as an evidence of any transaction vis-a-vis such property.*

16. Moreover, the tenant cannot challenge the title of the landlord of the suit property in view of Section 116 of the Evidence Act, 1872, which clearly stipulates that there would be an estoppel against a tenant challenging the landlord's title. This Court has, in ***Abhishek Gupta v. Shashi Kumar Shukla (RSA 55/2020, decided on 7th September 2021)*** has recently observed:

“27. Even otherwise, it is the settled principle in law that a tenant cannot challenge the title of the owner/landlord, and there is an estoppel in this regard, in terms of Section 116 of the Indian Evidence Act, 1872. The Hon'ble Supreme Court in **Sri Ram Pasricha v. Jagannath** [(1976) 4 SCC 184], observed that, in a suit for eviction by the landlord, the tenant is estopped from questioning the title of the landlord as per Section 116 of the Indian Evidence Act, 1872. Similarly, in **Tej Bhan Madan v. II Additional District Judge & Ors.** [(1988) 3 SCC 137], the Hon'ble Supreme Court observed as under:

"9. The law as to the estoppel of a tenant under Section 116 of the Evidence Act is a recognition and statutory assimilation, of the equitable principles underlying estoppel in relation to tenants. The section is not exhaustive of the law of estoppel. The section, inter alia, predicates that no tenant of immovable property shall, during the continuance of the tenancy, be permitted to deny the landlord of such tenant had, at the beginning of tenancy, title to such property."

Thus, the tenant cannot be permitted to question the title or ownership of the landlord as is sought to be argued by Mr. Sharma.

17. Considering the overall facts of this case, including the written statement and the reply to the legal notice, it is clear that the admissions by the Defendant- tenant are categorical and unequivocal. The tenant admits that there was a landlord-tenant relationship, as he states that Rs.50,000/- was paid as a security at the time when the premises were taken on rent. Further the rent agreement has even been admitted in the reply to paragraph 1 of the plaint. There is also no denial as to the amount of rent which was

paid. The tenant in fact attempts to argue that rent was being regularly paid, which further reaffirms the relationship between the landlord and tenant, as also the amounts of rent payable. On a query from the Court to Mr. Sharma, Id. Counsel for the tenant, as to whether the photographs of the tenant on the rent agreement are admitted, he answers in the affirmative.

18. Accordingly, in the face of such clear pleadings, there is no reason as to why a decree under admissions cannot be passed by the Trial Court. The Trial Court, in its order dated 1st June, 2019, has arrived at the following conclusions:

“11. A judgment under Order XII Rule 6 CPC requires that there is unequivocal and clear admission on part of the defendant in every matter. In the present case, the defendant, in his WS, has stated that at the time of execution of lease deed, the plaintiff received Rs. 50,000/- in cash from the defendant as security amount. Further, the defendant has stated that he paid the rent regularly and has paid the rent till September 2018. It is further stated by the defendant that he is a good pay master and pays well to the plaintiffs without failure. Therefore, there is an admission on behalf of the defendant as to the execution of lease agreement. There is also admission of landlord tenant relationship by the defendant as he has clearly stated that he regularly pays rent to the plaintiffs. The defendants have disputed the fact of payment of arrears of rent since July 2018 and also payment of electricity and water charges. However, the defendant has nowhere specifically denied the rate of rent. Therefore, as per Order 8 Rule 5 CPC, it will be taken as admitted.

12. The pleadings in the WS have to be read as a whole and there should be an unambiguous and clear admission to entitle the plaintiff to relief under Order XII Rule 6 CPC. The admission should be such that it should enable the court to draw a decree for eviction.

13. Keeping in view the facts, legal propositions and observations discussed above, it is held that the plaintiff has established her claim on record through the admissions made by the defendant. The present application of the plaintiff under Order XII, Rule 6 CPC stands allowed.

14. Accordingly, plaintiff is held entitled for relief of possession. Defendant is directed to vacate the suit, premises bearing Flat no. 153B, 3rd Floor, Opposite Punjabi. Bhaba, South Anarkali Extension, Delhi and hand over its peaceful vacant physical possession to the plaintiff within two months from the date of this order. Further, the defendant is directed to deposit the admitted rent i.e. Rs.17,000/- for the month of October 2018 as they have stated that there is no rent due on behalf of defendant till September 2018.”

19. This order has been upheld by the first Appellate Court, vide the impugned order dated 28th November 2019, in the following terms;

“12. A reading of the aforesaid clause reveals that the respondent can be fastened with the liability to refund the security amount at the time of delivery of vacant possession only if the appellant has made payment of entire rent amount and the other dues. The respondent has alleged that the appellant is in arrears of rent since July, 2018. The appellant has himself admitted that he has paid rent of the suit property only till September, 2018. When the appellant, admittedly, is in arrears of rent, he cannot compel the respondent to discharge his obligation under the Rent Agreement of refunding the security amount. The Rent Agreement dated 02.01.2016, being an admitted document, the security amount of Rs.50,000/- mentioned therein as such would be adjusted towards arrears of rent/mesne profits, however, the appellant cannot protect his possession on this solitary ground.

13. The grounds raised by the appellant are devoid of merits and are, accordingly, dismissed. In the opinion of the court, there are no disputed questions of fact which require trial and, therefore, Ld. Trial Court has rightly decreed the relief of possession under Order 12 Rule 6 CPC. There are categoric and unequivocal admissions of the appellant on record, the provisions of Order 12 Rule 6 CPC must apply otherwise the legislative intendment of shortening litigation when there are clear cut admissions will be defeated and a tenant will be allowed to unnecessarily delay and drag the proceedings.”

20. In view of the above concurrent findings by both the Trial Court as also the First Appellate Court, and also in the face of the admissions in the written statement and reply to the legal notice, this Court is of the opinion that no substantial question of law arises in this matter. Therefore, the present second appeal is liable to be dismissed and the decree is upheld.

21. It is also noticeable that notice in this matter was issued on 4th February, 2020, and no stay was granted. Considering the fact that the tenant has enjoyed the premises even after the decree of eviction was passed on 1st June, 2019, post the passing of the decree, i.e., w.e.f 1st August, 2019 the tenant would be liable to pay a sum of Rs. 17,000/- per month, which is the admitted rent, till the date when possession is handed over. The execution proceedings, are already stated to have been filed, and accordingly, the amounts as per today's order, shall also be liable to be recovered by the Plaintiff in the execution proceedings.

22. The present appeal is dismissed in these terms.

PRATHIBA M. SINGH
JUDGE

OCTOBER 7, 2021

mw/Ak