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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APDT/9/2022
WITH
CS/154/2021
IA GA 1/2022
RAJESH MITRA @ RAJESH KUMAR MITRA & ANR.
VS.
KARNANI PROPERTIES LIMITED

BEFORE :

THE HON'BLE JUSTICE HARISH TANDON
And
THE HON'BLE JUSTICE PRASENJIT BISWAS
Date : 8th December, 2022

Appearance :
Mr. Mainak Bose, Adv.
Mr. Rishad Medora, Adv.
Mr. Dipayan Kundu, Adv.
....for appellant

Mr. Sabyasachi Chowdhury, Adv.
Mr. Biswanath Chatterjee, Adv.
Mr. Neelesh Chowdhury, Adv.
Ms. Anuradha Poddar, Adv.
Mr. Shounak Mukhopadhyay, Adv.
...for respondent

The Court : This matter was mentioned to be taken up out of turn
citing an urgency.

The appellant invited the attention of the Court that pursuant
to an order of the executing court Sheriff has gone to the decretal

property and intended to take possession thereof and unless there is an order staying the process of execution passed by this Court it would virtually render the instant appeal infructuous. We directed the appellant to serve a notice upon the respondent and fixed the matter today so that the issue raised in the instant matter can be conveniently decided in presence of both the parties.

At the time of hearing the counsel appearing for the respective parties and the point urged in the instant appeal, we feel that it would be an idle exercise to keep the appeal pending as the documents which are available on record are sufficient enough to decide the core issue involved in the instant appeal.

The instant appeal has been filed impugning the judgment and order passed by the trial Court on an application under Order 12 Rule 6 of the Code of Civil Procedure. A little prelude to the disputes between the parties is required to be adumbrated. The salient facts which emerge from the records that the plaintiff/respondent filed the suit for recovery of possession in respect of the suit property treating the defendant/appellant as a trespasser having lost their right, title and interest to remain there on applicability of the definition of a tenant enshrined under section 2(g) of the West Bengal Premises Tenancy Act, 1997.

It is a suit for eviction simpliciter against a person who allegedly could not qualify the definition of a tenant given under section

2(g) of the said Act and not a suit where the eviction is sought on one or more grounds enumerated under section 6 of the said Act.

An application for judgment upon admission under Order 12 Rule 6 of the Code of Civil Procedure was taken out by the plaintiff/respondent alleging that the defendants/appellants unequivocally and clearly admitted that the tenancy stood in the name of their mother who expired on 3rd November, 2009 and, in view of the provisions contained under Section 2(g) of the Act, he cannot be regarded as a tenant and his status became that of a trespasser and, therefore, a decree for eviction should be passed on such admission.

On the other hand, the defendants/appellant contend that such factum cannot be construed as an admission on their part as initially the said tenancy stood in the name of their father who expired on 6th July, 1970 and the law operating in the field at the relevant point of time does not create any distinction over the heritability of the tenancy and, therefore, all the heirs including the widow of the deceased tenant succeed the said tenancy as joint tenants. It is, thus, submitted that even if the tenancy was granted in the name of the widow i.e., the mother of the present defendant/appellant, it was all along intended the said tenancy as the joint tenancy of all the heirs of the original tenant (since deceased) and, therefore, the death of the mother does not affect the rights accrued in the year 1970. It is further contended that in a suit pending before this Court, the receiver had been appointed who collected

the rent all along and the defendants/appellants continued in discharging its obligation by paying the rent to the receiver and, therefore, there is no jural relationship of landlord and tenant between the respondent and the present appellant.

It would be relevant to record the facts discerned from the stand of the respondent that the suit in which receiver was appointed was filed in relation to the installation of the fire fighting equipment and other related issues not in relation to a dispute amongst the directors or the shareholders of the respondent-company. It is, thus, cannot be construed that the said receiver usurped the right of the landlord or the owner but such arrangement was made for a limited purpose and, therefore, there is no impediment in maintaining the suit.

On the conspectus of the aforesaid fact, more particularly, the statements made by the defendant/appellant in relation to another proceeding, the questions which fall for consideration is whether the same can be construed as an admission within the meaning of Order 12 Rule 6 of the code. Before we proceed to decide the same, it would be relevant to quote the provision contained in Order 12 Rule 6 of the Code which runs thus:

“6. Judgement on admissions. – (1) *Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any*

other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule(1) a decree shall be drawn up in accordance with the judgement and the decree shall bear the date on which the judgment was pronounced.”

From the reading of the aforesaid provisions it is no longer *res integra* that the Court can pass the judgment on admission made either in pleading or otherwise without waiting for determination of any other question between the parties. The object sublime the incorporation of the aforesaid provision is laudable as it not only avoids the time to be consumed for deciding the other issues, but also give immediate relief to the plaintiff to the extent of the claim for which the admission is made. It is beyond doubt that the admission per se cannot be said to be an admission within the purview of the aforesaid provision but such admission which is unequivocal, clear, unambiguous and does not invite any second meaning thereto. The admission may be made in relation to a fact or in relation to a claim which can be reasonably deciphered from the language employed in the aforesaid provision. The object of incorporation of the said provision has been succinctly narrated in the judgment rendered by the Supreme Court in the case of *Uttam Singh Duggal & Co. Ltd. vs. United Bank of India & Ors.* reported in 2000(7) SCC 120 in the following:

“12. *As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.” We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.”*

It is thus discerned from the aforesaid judgment that the aforesaid provision is enacted to give a speedy disposal of the claim and to provide a quick relief either granting the claim as a whole, or in part. Since, the admission itself gives a right to the plaintiff to have the judgment in their favour such admission has to be construed in a pragmatic manner as every admission or the statement of facts may not justify or invite the judgment on admission. The Apex Court in *Uttam Singh Duggal (supra)* not only emphasises the extent of the plain admission entitling the plaintiff to succeed but also all category of clear admission of facts on the face of which it is impossible for the party to defend. It has been highlighted that the said provision should not be

construed narrowly but in such manner which justify the laudable object and the purpose to achieve.

On the contour of the aforesaid law, enunciated by the Supreme Court, the point which boils down in the instant case is whether, the statement made by the defendants can be construed as an admission justifying the judgment to be passed on admission.

It is not in dispute that the tenancy originally stood in the name of the father of the defendants/appellants. After his death in the year 1970 the tenancy was changed in the name of the mother of the defendants/appellants and the rent receipts were all along issued in her name although she died on 3rd November, 2009. The tenancy which was initially protected under the West Bengal Premises Tenancy Act, 1956, in absence of any restriction, is thrown outside the protected umbrella on promulgation of the West Bengal Premises Tenancy Act, 1997 bringing a radical change in the definition of a tenant. The said Act defines the tenant under Section 2(g) as follows :-

“2(g) “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, 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, his spouse, son, daughter, parent and the widow of his pre-deceased son, who were ordinarily living with the tenant up to the date of

death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and in respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family and were dependent on him [or a person authorised by the tenant who is in possession of such premises.] but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

Provided that the time limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependent on him and who does not own or occupy any residential premises:

Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependent on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises [on condition of payment of fair rent]. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

Under the West Bengal Premises Tenancy Act, 1956 the definition of a tenant stood thus :-

“2(h) “tenant” [means any person] by whom or on whose account or behalf, the rent of any premises is, or but for a special contract would be, payable and [includes any person continuing

in possession after the termination of his tenancy or in the event of such person's death, such of his heirs as were ordinarily residing with him at the time of his death], but shall not include any person against whom any decree or order of eviction has been made by a Court of competent jurisdiction."

The stark difference between the definition of a tenant in the aforesaid Acts can be visualised from a bare reading thereof and the restrictions which was conspicuously absent in the definition of a tenant given under 1956 Act are being incorporated in the definition of a tenant under 1997 Act. Under the Act of 1956, the tenancy being heritable, the estate used to devolve upon the heirs and the successors by virtue of ordinary law of succession and it is only in case where the tenancy was determined and the tenant dies, such of the heirs who were ordinarily residing with the deceased tenant at the time of his death, such position does not appear in the definition of a tenant given under 1997 Act. It reflects the heritability of the estate of the deceased tenant and the exception which can be seen from the proviso inserted thereto that the spouse of the deceased tenant was excluded from the time limit of five years if he or she was ordinarily living with the deceased tenant upto his death as a member of the family and was dependent upon him and also does not own or occupy residential premises.

What can be logically deduced therefrom that the heritability of the estate of the tenant was restricted for a period of five years from the date of the death in case the tenant dies after promulgation of the said

Act to the other heirs excluding the spouse who have been kept in the exception (provided the conditions imposed therein are duly fulfilled and/or satisfied). A striking feature may further be noticed from the definition of the tenant under 1997 Act in relation to the fixation of the time limit fixed therein which, if lost sight of, shall frustrate the legislative intent. The son, daughter and the parents shall not be entitled to take protection under the aforesaid definition, if the tenant dies prior to the promulgation of the said Act and the aforesaid period would be reckoned from the date of coming in force of the said Act. Otherwise, the expression “from the date of coming in force of this Act, whichever is later” shall be redundant and meaningless. What can be legally deduced therefrom is that even if the tenant dies when the Act of 1956 was in vogue, yet the heirs other than the spouse would not get any protection in relation to a time limit under the definition of the tenant in the Act of 1997 and, therefore, the concept of “devolution” of the tenancy right under the 1956 Act cannot be said to be inflexible. The legislatures can restrict the heritability of the tenanted estate which does not offend the constitutional ethos nor can be impinge on the ground of restricting the succession in relation to our tenanted property. What can be culled out from the aforesaid discussion that the heirs other than the spouse, even if they satisfy the other conditions laid down in the definition provision, loses their right as a tenant nor protected under the provisions thereof after the expiration of five years from the date of the death and in

the event the death occurs after coming in force of the said Act or upon expiration of five years from the date of coming in force of the Act of 1997, whichever is later.

Such being the proposition of law, there is no doubt that on the death of the original tenant or on the death of the spouse of the original tenant, the heirs are not regarded as the tenant nor satisfy the definition of tenant under the Act of 1997.

It takes us to another facet of the dispute whether an admission made in other proceeding unrelated or unconnected with the instant proceeding can be regarded as an admission within the meaning of Order XII Rule 6 of the Code of Civil Procedure. The aforesaid observation is made because of the fact that the plaintiff/respondent culled out the deposition of one of the defendant/appellant in another proceeding initiated against the other tenant and treating the same as an admission for the purpose of Order XII Rule 6 of the Code. Naturally, there is no admission at the behest of the defendant/appellant in the pleadings filed in the instant case. The admission is sought to be borrowed from the deposition in another case not related to the defendant/appellant. The admission goes to the extent that in the cross examination one of the defendant/appellant, who stood as one of the witnesses in the said suit, stated that the tenancy was standing in the name of the mother who expired on 3rd November, 2009. Such statement inspired the plaintiff/respondent and the root cause of the institution of

the present proceeding is founded thereupon which can be seen from various statements made in the plaint as well as an application under Order XII Rule 6 of the Code. The language used in Order XII Rule 6 is of wide connotation and does not abridge or squeeze to an admission made in the pleadings. The expression “or otherwise” expanded the horizon of such provision provided the admission is unequivocal, clear, unconditional and no other interpretation can be assigned to the word “construed as admission”.

The enlightening observations of the Supreme Court in the case of Uttam Singh Duggal (*supra*) may be a guiding factor wherein it is held that the said provision cannot be activated only on a plain admission entitling the plaintiff to succeed but can also be made applicable to a clear admission of the facts which on the face of it make it impossible for the party making such admission to succeed. Such being the scope and the ambit of the aforesaid provision, there is no ambiguity in our mind that the admission can also be perceived beyond the pleading provided such admission is made clearly and unequivocally. The statement made as a witness in another proceeding, if amounts to an admission, can be projected affront as an admission made within the expression “or otherwise” to which we do not find any difficulty in holding so. There is a clear admission that the tenancy was standing in the name of the mother who admittedly expired on 3rd November, 2009 and the instant suit was filed beyond the period of five years and, therefore, in view of the

definition of the tenant under Section 2(g) of the Act of 1997, it is impossible for the defendant/appellant to succeed as the suit is filed simplicitor for recovery of possession from trespasser.

In case of *S. M. Asif vs. Virender Kumar Bajaj* reported in (2015) 9 SCC 287 as relied upon by the defendant/appellant, we do not find that the said judgment can be of any assistance to him. It was a case of eviction of a tenant who was inducted on the basis of an agreement for lease which was extended by executing and registering the further agreement for lease of two years. The said lease was terminated upon a notice under Section 106 of the Transfer of Property Act and a defence was taken by the defendant/tenant therein that during the currency of the said lease, an agreement for sale was executed between the parties and, in fact, the substantial amount was already advanced to the landlord. It further appears that a suit for specific performance for such agreement was also filed for the defendant/tenant which was pending on the date of the filing of the suit for recovery of possession. In the backdrop of the aforesaid, the Apex Court held that the power conferred upon the Court under Order XII Rule 6 of the Code is discretionary and cannot be claimed as a matter of right. It is further held that once disputed questions have been raised, which may impinge upon the right of the landlord to recover possession in the event the decree for specific performance is passed and, therefore, it is not a fit case where judgment on admission should be passed.

Every decision is taken in the perspective of the given facts. The ratio has to be culled out on the basis of the facts germane from the case and should not be applied in abstract manner. The facts therein did not justify the exercise of power under Order XII Rule 6 of the Code, more particularly when an agreement for sale was alleged to have been entered into between the landlord and the tenant and a suit for specific performance filed by the tenant was pending. Such situation cannot be perceived from the facts of the instant case and, therefore, we do not find that the said judgment can be of any assistance to the defendant/appellant.

In the case of *Karan Kapoor vs. Madhuri Kr.* reported in 2022 SCC Online 791. The Apex Court accepted and reinstated the proposition of law laid down in *S.M.Asif (supra)* and found that the facts involved therein is compatible to the facts involved in the said case as under :

“20. *In the context of the said legal position, reverting to the facts of the present case, it is apparent that the first Lease Agreement was executed on 07.08.2011 on a monthly rent of Rs. 1,17,000/- of a suit premises. The said Lease Agreement was for a period of 02 years ending in July 2013. By the consent of the parties extended Lease Agreement dated 07.08.2013 was executed for a further period of 11 months for a monthly rent of Rs. 1,50,000/- with approximate increase in rent amount by 30% for the next one year. Admittedly, the notice for eviction was issued terminating the lease due to non-payment of the rent after the expiry of the extended lease*

period which is due for payment by the Defendant. The suit for eviction was filed on 18.05.2018 for possession (based on Landlord-Tenant relationship), arrears of rent, mesne profit and pedente lite. The said suit was contested by the Defendant in which the ownership was not denied. The execution of first Lease Agreement dated 07.08.2011 and the extended Lease Agreement dated 07.08.2013 was also not denied. The monthly tenancy and payment of rent in terms of Lease Agreement is also not denied by the Defendant. The Defendant has taken a defence that the property belonging to him in Amloh was agreed to be sold to the plaintiff to which effect ATS-II dated 25.05.2017 was executed. Further the defendant has contended that, ATS-III dated 30.12.2017 was executed after some adjustments in consideration was made. Hence, the Defendant argued that on account of execution of the three Agreements to Sell with respect to the suit property for a sum of Rs. 3,60,00,000/-, the relationship of Landlord-Tenant ceased to exist and the Defendant acquired the status of the owner as he has already parted with the possession of the property under the Lease Agreement.”

Since the cases of *S. M. Asif (supra)* and *Karan Kapoor (supra)* are on the provisions of Order XII Rule 6 of the Code, yet in both the cases, the parity in the facts can be seen that the tenant alleged that the landlord has, in fact, agreed to sell the property and executed the agreement in this regard. Such fact is conspicuously absent in the instant case and, therefore, the decision taken in the aforesaid reports cannot be applied simplicitor on the basis of the ultimate decision taken therein by dismissing the application under Order XII Rule 6 of the Code.

We thus do not find any infirmity and/or illegality in the impugned order.

Appeal is thus dismissed.

Connected application is, accordingly, dismissed.

However, we grant three months' time to the defendant/appellant to vacate the decretal premises.

Since we have given three months' time to vacate, the plaintiff/respondent shall not proceed with the execution case pending before the Executing Court for such period.

(HARISH TANDON, J.)

(PRASENJIT BISWAS, J.)