

August 22, 2023
Sl. No.07
Court No.19
s.biswas

CO 1814 of 2022

Mrs. Billy Mehra

vs.

Sri Ramesh Chandra Thakkar and others

Mr. Suddhasatva Banerjee

Ms. Arpita Saha

Mr. Amit Muhuri

Ms. Rituparna Chatterjee

... for the petitioner

Mr. Pinaki Ranjan Mitra

Mr. Sugata Mukhopadhyay

... for the opposite parties

This revisional application arises out of an order dated May 18, 2022, passed by the learned Civil Judge (Senior Division), 2nd Court at Alipore, South 24 Parganas, in Title Suit No.65 of 2016.

By the order impugned, the learned Judge rejected the application under Order 12 Rule 6 read with Section 151 of the Code of Civil Procedure, filed by the petitioner. The petitioner is the plaintiff/landlord in the suit for eviction. The suit for eviction of a trespasser, in terms of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 was filed. The plaintiff contended that the defendants were trespassers as they did not have any right to remain in the premises after five years from the death of the original tenant.

An application for judgment on admission as per the averments made by the tenants/defendants in the written statement, was filed. The learned court was of the view that a trial was required as there was

no clear and unequivocal admission in the written statement.

According to the petitioner, learned court below erred in coming to the conclusion that the defendant no.2 being the widow of the original tenant, had the right to continue living in the subject premises, even after expiry of five years.

According to Mr. Banerjee, the defendant no.2 was the widow of a deceased son of the original tenant and not the widow of the original tenant. Paragraphs 4, 6 and 11 of the written statement have been relied upon to demonstrate that the defendant no.1 admitted that he was residing in the premises by devolution of the property from the original tenant. The defendant no.1 and his brother Tulsi Ram (since deceased) became tenants in respect of the property in question. The suit was filed by suppressing the fact of devolution of tenancy.

It has been further emphasized by Mr. Banerjee that the defendant no.1 had admitted that up to April 2005, the rent receipts were granted in the name of the deceased father of the defendant. The said averments appear at paragraphs 4 and 5 of the written statement.

It has been averred that in May 2005, the plaintiff received money, but did not grant any receipt to the defendants.

Thus, according to Mr. Banerjee, the question of attornment of tenancy in favour of the heirs of the original tenant did not take place and a judgment on admission on the basis of averments made in the written statement, would lead to expeditious disposal of the proceedings. The fate of the suit is a foregone conclusion.

Mr. Banerjee, relied on the decision of a Co-ordinate Bench of this court in the matter of **Shivani Properties Pvt. Ltd. vs. Rama Shankar Pandey and others** reported in 2021 SCC OnLine Cal 4284 and in the matter of **Mangalic Enterprise vs. Swapan Kumar Das and others** reported in 2022 SCC OnLine Cal 2036.

Mr. Mitra, learned advocate appearing on behalf of the plaintiff/landlord submits that only when the parties are not at issue, can a judgment upon admission be filed.

In the present case, the defendant No.1 filed a written statement denying the contentions of the plaintiff. The said defendant is contesting the suit. The defendants incurred expenses with regard to the maintenance of the property, installation of deep

tubewell and payment of property tax. The question of passing a judgment upon admission did not arise.

Mr. Mitra relied on the decision of the Hon'ble Apex Court in the matter of **Karan Kapoor vs. Madhuri Kumar** reported in 2023 (1) Indian Civil Cases 875 (S.C.).

According to Mr. Mitra, the admission has to be clear and categorical. The learned trial judge exercised discretion by not allowing the application under Order 12 Rule 6 of the Code of Civil Procedure. Hence, the revisional court should not enter into the domain of the learned trial judge by interfering with the order impugned.

Heard the learned advocates for the respective parties. For clarity and convenience, the relevant paragraphs of the plaint are quoted below:

“3. The said Odhavji Premji Thakkar, the original tenant and his wife died long back. The Defendants are occupying the tenanted part of Odhavji Premji Thakkar the father who died long back before 2005, leaving behind him surviving the defendant's above named as his heirs and legal representatives.

4. After the death of the said Odhavji Premji Thakkar, and of his wife, his tenancy was inherited by his heirs for a period of five years from the date of his death. The plaintiff has no specific knowledge about the date of death of him or his wife. The defendants are depositing rent to the credit of the plaintiff in the office of the Rent Controller, Kolkata. The plaintiff has been able to get hold of one of such rent deposit challans for the month of October, 2005. So, it could be safely presumed that the father and his wife died before October 2005, making the defendants statutory trespassers from November, 2010.

5. There is no necessity of giving notice under section 6(4) of WBPT act 1997, yet a notice bearing No. DSP: 94/1/186 dated 1st June, 2016 issued by the Learned Advocates of the plaintiff in favour of the defendants. Thereby, the plaintiff called upon the defendants to quit and vacate and deliver up vacant, peaceful possession of the said flat forthwith from the date of receipt of the said notice. It was clearly stated therein that in the event, the defendants did not vacate the said flat, the plaintiff would initiate proceedings for recovery of possession and for recovery of mesne profits @ Rs.2000/- per diem on and from November 2010 till recovery of Khas possession. The said notice should only served upon the defendants on June 02, 2016.

6. In spite of the receipt of the said notice, none of the defendants have quitted, vacated or delivered up vacant and peaceful possession of the said flat to the plaintiff and the defendants have been in occupation of the said flat on and from November 2010 as illegal trespassers and have made themselves liable to be evicted through due process of law, hence this suit.”

The plaint case is clear. One Odhavji Premji Thakkar was the tenant in respect of the flat in question. Odhavji Premji Thakkar died long time back, before 2005. His widow also died. The defendants were occupying the tenanted property, as heirs and the legal representatives of the original tenant. Their right to remain in the property expired after the period of five years from the date of death of the original tenant. The defendants were depositing rent in the office of the learned Rent Controller. The last of such receipt which the plaintiff could get hold of was a challan showing deposit in October 2005. It could be safely presumed that the Odhavji Premji Thakkar died before 2005. That the plaintiff called

upon the defendants to quit and vacate the premises. The notices dated June 1, 2016 and June 2, 2016 were received by the tenants. Yet, the tenants continued in possession and the suit was filed for eviction.

Thus, the plaintiff claimed eviction in terms of Section 2(g) of the West Bengal Premises Tenancy Act, on the ground that the heirs of the original tenant had become trespassers after the expiry of five years from the death of the original tenant.

Apart from the defendant no.1, none of the other defendants filed any written statement. Only the defendant No.1 entered appearance in the suit. The relevant paragraphs of the said written statement are quoted below for convenience:

“5. This defendant states that Odhavji Premji Thakkar came to occupy the said flat in August, 1976 as a monthly tenant at the rate of Rs. 525/- per month payable according to English Calendar and apart from the said rent the said Odhavji Premji Thakkar paid Rs. 5000/- as advance.

6. While in occupation thereof an agreement was entered into as between the plaintiff and Odhavji Premji Thakkar in 1982 for 14 years but in the meantime the father of the defendants expired on 07/01/1992 but the plaintiff continued to grant rent receipt in the name of this defendant's father till April, 2005 as the rent was paid by cheque issued by this defendant.

7. In may, 2005 although the plaintiff received rent but in spite of repeated requests and demands did not grant receipt and finding no other way out this defendant along with his brother Tulsi Ram Thakkar since deceased started to deposit rent with the office of the Rent Controller at Kolkata. Be it mentioned here that this defendant although paid KMC

tax and either statutory outgoings of the said flat.

8. About four years back the water connection to the said flat was cut off due to non payment of property tax by the plaintiff and the deep tube well was also broken the defendant along with other tenants in occupation of the suit house restored the same by incurring expenses as the plaintiff did not come to bear the expenses.

9. Similarly whenever the lift has been out of order it had to be repaired by the tenants of the building as the Plaintiff refused, to pay any amount on account thereof and this defendant has filed copy of the letter dated 25th June, 2005 sent by this defendant to the plaintiff and this defendant craves leave to refer to the same at the hearing or as and when called for by the learned Court.

10. Since May, 2017 the plaintiff with ulterior motive disconnected supply of water to the said flat from the overhead reservoir as a result whereof this defendant has been securing water with the help of Bhari and thereafter the plaintiff tried to forcibly oust this defendant from the suit flat as a result whereof in defendant has initiated a criminal proceedings registered as complaint case No. 3861 of 2017. This defendant craves leave to refer to the same at the hearing.

11. That as hereinbefore stated the predecessor of this defendant and his brother being a tenant in respect of the suit property the said tenancy devolved on them and thus the plaintiff's suit was framed by suppressing the said fact is patently misconceived."

The specific case of the defendant no.1 is that the father died on January 7, 1992, but the plaintiff continued to grant receipt in the name of the deceased father till April 2005. The mother predeceased the father. From May 2005 no receipts were granted in favour of the defendant no.1 and his brother and deposits were made before the learned rent controller. However, the specific dates, time and

period of the deposit before the rent controller is absent in the written statement. It has also been stated that considerable amount of money was spent for installation of deep tubewell and that the plaintiff refused to grant rent receipt to the defendant no.1. The plaintiff also refused to provide basic amenities available in the suit property. In paragraph 11 of the written statement, it has been stated that after the demise of the father, the defendant and his brother became tenants in respect of the property by devolution from their predecessor. The plaintiff's suit was framed by suppressing the fact of devolution. The brother, i.e., predecessor of the defendant Nos.2, 3, 4 late Tulsi Ram Thakkar, also died.

There is an admission that the property devolved upon the defendant No.1 and predecessor of the defendant Nos. 2 to 4 upon the death of the original tenant (father). The defendants could remain in the premises up to five years from the date of death of the original tenant. The defendant No.1 had admitted that no rent receipts were issued after May 2005. The rent receipts were issued up to April 2005 in the name of the (deceased) original tenant.

In an application under Section 7(1) of the West Bengal Premises Tenancy Act, the defendant No.1 made the following statements:-

“3) That in the year 1982 at instance of the plaintiff's father since deceased your petitioner's

father Adhavji Premji Thakkar since deceased entered into an Agreement of tenancy with one Lakshmi Narayan Chopra the father of the plaintiff as the father of the plaintiff as proprietor of Chopra Motors.

4. That your petitioner's father (Odhavji Premji Thakkar) died in 1992 leaving your petitioner and predecessor of defendant nos.2 to 4 as his heirs and legal representatives as such your petitioner along with his brother became tenant in respect with the said flat.

5. That your petitioner paid rent in respect of the said flat till April, 2005 by account payee Cheque and subsequently granted rent receipts the same.

6. That thereafter in spite of due tender the plaintiff having refused to accept rent your petitioner started depositing rent with the office of the Rent Controller Kolkata in the name of Chopra Motors since May, 2005, and your petitioner have been depositing rent since enhanced to from time to time and lastly at the rate of Rs.701.95 since September, 1999 till June, 2018.

7. That the defendants no.2 to 4 have since left the suit premises and have been residing elsewhere which is not known to your petitioner."

The application was rejected by the learned court below, but the averments are significant.

The objections of the defendant No.1 to the application under Order 12 Rule 6 of the Code of Civil Procedure, it was stated as follows:-

"5. That as fully set-forth in the Written Statement your petitioner's father Odhavji Premji Thakkar died on 07.01.1992 his wife having predeceased him the right of tenancy vested on your petitioner and his two other brothers'. The heirs of other brothers have been impleaded as defendant no.2 to 4.

6. That thus the right of tenancy of Adhavji Premji having vested on your petitioner as far back in 1992 when the West Bengal Premises Tenancy Act, 1956 the said right cannot be divested due to coming into force of West Bengal Premises Tenancy Act, 1997 on 10th July, 2001."

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 the said Act, whichever was 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 did 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.

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 was 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 was later. The written statement discloses that the father died on January 7, 1992. If the relevant date is taken to be the date on which the West Bengal Premises Tenancy Act, 1997 was notified, five years from that date would expire in December 2003. Thereafter, the defendants lost their right to remain in the subject premises.

Even assuming that the death was not known to the landlords and the receipts were granted in the name of the deceased tenant upto April 2005, the defendants lost their right to remain in the premises after 5 years, from April 2005.

Thus, this court is of the view that no useful purpose will be served to keep the suit pending. In **Shivani Properties** (supra) a learned Co-ordinate Judge discussed the scope of Order 12 Rule 6 as hereunder:-

“12. 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.”

Considering the definition of tenant under Section 2(g) of the Act and the pleadings in the written statement and written objection filed by only the defendant No.1, there are admissions that the

defendants were claiming tenancy of the premises on the basis of devolution from the original tenant. There is no plea of attornment of tenancy. Paragraph 15 of **Shivani Properties** (supra) is quoted below:

“**15.** 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.”

In ***Sri. Sushil Kumar Jain v. Pilani Properties Limited***, reported in **(2018) 1 CHN 396**, a Division Bench of this court clarified the intention of Section 2(g) of the 1997 Act. Only the heirs of the original tenant who were dependent on him and were residing with him at the time of his death, were considered as tenants. 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 had been created prior to the 1997 Act, it could not be said that the protection enjoyed under the 1956 Act would continue even after the 1997 Act came into operation.

In this case, the defendant no.1 has specifically admitted that the original tenant died in 1992. The mother pre-deceased the father and there are specific averments that he was residing in the premises as the tenancy devolved upon him and his brother (since deceased). Such devolution was by way of inheritance and there is not a single averment which would show that the defendants had been recognized as tenants by the plaintiff after the death of the father.

Thus, the averments made in the written statement are clear and unambiguous with regard to the devolution of tenancy and the status of the defendants. Even if the defendant no.1 is contesting the suit, the claim on which the defendant no.1 was asserting his tenancy right in the property, is by inheritance from the original tenant. This fact cannot be disregarded and amounts to an admission.

In the decision of **Mangalic Enterprise** (supra) the Co-ordinate Bench has specifically held that on the factual aspects of a particular case, the jural

relationship between the landlord as tenant would be assessed and judgment on admission could be passed, by applying the tests laid down.

Hence, on the strength of the admissions made by the defendant no.1 in the written statement, that the defendants were residing in the premises by devolution of tenancy from the original tenant, there is no reason as to why a judgment on admission cannot be passed. The defendant no.1 has stated in the application under Section 7(1) of the said Act that the other defendants had left the premises and they were not residing there.

Under such circumstances, this is a fit case for a judgment on admission with regard to a decree of recovery of khas and vacant possession. The finding of the learned court below is factually incorrect. The defendant No.2 is not the widow of the original tenant. The learned court below erred in holding that the defendant no.2 was the widow of the original tenant.

The decision of the Hon'ble Apex Court relied upon by Mr. Mitra, i.e., **Karan Kapoor (supra)** is not applicable. The defendant in the said suit had set up a plea that during subsistence of a landlord tenant relationship, a separate agreement had been entered into between the parties with regard to the sale of the property in favour of the tenant. Thus, the

tenant had set up a separate claim with regard to his right to reside in the property on the basis of part performance of an agreement for sale. The decision is distinguishable on facts. The decision in **Shivani Properties** (supra) applies to the facts of this case.

This court is of the view that a decree for eviction and recovery of khas and vacant possession, is fait accompli in the facts of this case. Unnecessary procrastination of the suit will only result in wastage of judicial time and cause hardship to the landlord.

The order impugned is set aside. The learned court below is directed to pass a judgment on admission in terms of prayer 'b' of the plaint and adjudicate the other prayers with regard to mesne profits, costs etc.

The revisional application is thus disposed of.

All the parties are directed to act on the basis of the server copy of the order.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Shampa Sarkar, J.)