

December 18, 2023
Sl. No.16
Court No.19
s.biswas

CO 2446 of 2023

Anjana Guha and others
vs.
M/s. Xclusive Inn Private Limited and others

Mr. Anirban Roy

... for the petitioners

The order dated July 10, 2023 passed by the learned Judge, Commercial Court at Rajarhat, North 24 Parganas, in connection with Title Suit No.06 of 2021, has been challenged before this court.

By the order impugned, the learned court rejected the application for a judgment on admission filed by the plaintiffs under Order 13A read with Order 12 Rule 6 of the Code of Civil Procedure. According to the learned court, the suit was being proceeded with under the provision of Transfer of Property Act. As per the tenancy agreement, the tenancy was for a period of 45 years, which was due to expire on March 28, 1954. Termination of the tenancy before 45 years, would require a notice to quit and vacate.

Under such circumstances, the court was of the view that a judgment on admission could not be passed. The learned court recorded the pleadings in the several paragraphs of the plaint and was of the opinion that this was not a fit case for grant of a judgment on admission.

Learned advocate for the petitioners submits that the Hon'ble Apex Court, in the matter of **Payal vision Limited vs. Radhika Choudhary** reported in (2012) 11 SCC 405, had categorically held that if the jural relationship of landlord and tenant was admitted and the fact that the suit was filed under the provision of Transfer of Property Act was also admitted, the court could pass a decree in terms of Order 12 Rule 6 of the Code.

Judgment on admission is a provision under Order 12 Rule 6 of the Code, which reads as follows:

“6. Judgment 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 judgment and the decree shall bear the date on which the judgment was pronounced.”

The provision empowers the court trying the suit, to deliver judgment based on admissions whenever such admissions appear to be sufficient for grant of the relief, prayed for. The admission has to be unequivocal and clear. Not in every other case, can the plaintiff seek to invoke the powers of the court under Order 12 Rule 6 of the Code and pray for a decree on the basis of admission. The

admission has to be deduced from the averments and the fact situation in each case.

It was held in the matter of **Jeevan Diesels & Electricals Ltd. vs. M/s. Jasbir Singh Chadha (HUF)** reported in (2010) 6 SCC 601, that whether an admission is clear and unambiguous is essentially a question of fact and the same varies from case to case.

Whether there is a clear admission cannot be decided on the basis of judicial precedence.

Coming to the fact of this case as to whether there is a clear admission with regard to the right of the petitioners to evict the defendant, the written statement is perused.

First and foremost, the defendant has contended that one Neetu Mitra, who is one fourth shareholder of the property, was a necessary party and the said co-sharer has been kept away from the litigation. The averment that the monthly rent of the Schedule B property was Rs.2,50,000/- was incorrect. It was further denied that the tenancy was exempted from the provisions of Section 3(f)(ii) of the West Bengal Premises Tenancy Act, 1997. As per Clause (iv) at page 5, of the tenancy agreement, the defendants were required to pay to Tarun Kumar Guha, predecessor of the plaintiffs, a sum of Rs.35,000/- only, per month as token rent.

The averments with regard to escalation of licence fees, were also denied. The further contention of the plaintiffs that the defendants had promised to deposit a sum of Rs.70 lakhs as an advance payment towards all arrears and statutory dues were also denied. It is submitted that the tenure of the lease was for 45 years and the plaintiffs had revoked the same verbally, asking the defendants to hand over the physical possession of the property. The tenancy agreement contemplated that premature termination of the lease/tenancy would require a notice in writing.

The learned court, upon coming to specific observations with regard to the averments in the plaint, was of the view that there was no clear and unequivocal admission on the part of the defendants with regard to the determination of the lease.

In the decision of **Payal Vision (supra)**, it was held that in a suit for recovery of possession from a tenant, which was not protected under the Rent Control Act, the landlord had to establish the jural relationship between the landlord and tenant between the parties and that the termination occurred either by lapse of time or by notice served by the landlord under Section 107 of the Transfer of Property Act. In this case, the termination of tenancy by lapse of time has not taken place and the learned

trial judge was of the finding that the notice to quit and vacate, had not been issued in terms of the tenancy agreement.

Under such circumstances, this is not a case where there is admission on the part of the defendants. Only because the defendants admit the jural relationship between landlord and tenant, that itself, would not be a ground for passing a decree of eviction and recovery of khas possession, on admission.

The learned court below did not commit any illegality and material irregularity. The learned court perused the plaint in detail and mentioned the relevant extracts from the said plaint in the order. The court rightly held that this is not a case for passing a decree of eviction and recovery of khas possession under Order 12 Rule 6 of the Code.

The revisional application is accordingly dismissed.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)