

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE
(Commercial Division)

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

APDT 10 of 2022
with
CS 105 of 2021
IA GA 1 of 2022

Kaiser Begum

Vs.

E. D. Enterprises Pvt. Ltd. & Anr.

Appearance:

For the Appellant	:	Mr. Sakya Sen, Adv. Mr. Arik Banerjee, Adv. Mr. Arijit Roy, Adv. Mr. Partha Pratim Mukhopadhyay, Adv.
For the Respondent No. 1	:	Mr. Ratnanko Banerji, Sr. Adv. Mr. Debdut Mukherjee, Adv. Mr. Meghajit Mukherjee, Adv. Mr. K. Kejriwal, Adv. Ms. Shivanji Thard, Adv. Ms. Vidhya Upadhyay, Adv.

Judgment On : **30.03.2023**

Harish Tandon, J.:

The judgment on admission is passed by the Single Bench on 28.7.2022 in CS No. 105 of 2021 directing the delivery of khas possession of the scheduled premises being the subject matter of the suit and for Rs. 10,11,500/- towards occupational charges in respect of the said suit premises.

Admittedly, the respondent is the owner of a demarcated portion of the ground floor and the mezzanine floor admeasuring approximately 374 sq. ft. super built up area situated at premises no. 42A, Shakespeare Sarani, Kolkata - 700020. The defendant/appellant was inducted as a tenant for commercial purposes at a rent of Rs. 1,40,000/- per month which was subsequently, enhanced to Rs. 1,61,000/- inclusive of the rent and the amenities charges. The lease agreement was entered into by and between the parties wherefrom it appears that a sum of Rs. 7 lakhs was deposited as security deposit. Pursuant to the said agreement and understanding between the parties, the appellant was put into possession by the respondents for using the said premises for commercial purposes and the rent in respect thereof was being paid from time to time until the default was committed on and from December, 2019. Since the appellant defaulted in payment of the rent and the amenities charges attached to the said suit premises the demand was made by the respondent but despite discharging his contractual and statutory obligation in payment of the rent and amenities charges for use and enjoyment of the suit premises, the appellant filed the Title Suit no. 571 of 2020 before the City Civil Court at Calcutta for declaration that there are a *bona fide* tenant and the tenancy right is still subsisting in respect of the suit premises at a monthly rent of Rs. 1,40,000/- per month payable

according to an English Calendar and a decree of perpetual injunction restraining the respondents herein from interfering and/or disturbing the peaceful possession, use and enjoyment of the suit premises and/or from disrupting the water and electric connection and other facilities and amenities attached to the said tenancy.

Indubitably, an application of injunction was taken out and an ad-interim order of injunction was passed against the respondent not to disturb and/or interfere with the possession of the appellant and also from disconnecting the water and electric connection and other amenities attached to the tenancy. Subsequently, by a notice dated September 24, 2022 the respondent determined the said tenancy under Section 106 of the Transfer of Property Act and the same was sent to the appellant by speed-post with acknowledgement due which was duly received by the appellant.

On the conspectus of the aforesaid undisputed facts, the respondent filed a suit for recovery of possession upon expiration of the period enshrined in Section 106 of the Transfer of Property Act and recovery of the arrear rents/occupational charges in terms of the agreement. A plea of demur was taken as the said suit is filed in ordinary original civil jurisdiction of this Court and since the transaction between the parties is of commercial nature, it is a commercial dispute and, therefore, the ordinary original civil jurisdiction of the High Court is denuded of power in view of the promulgation of the Commercial Courts Act, 2015. The aforesaid objection was sustained and the plaint was returned to be presented before the Commercial Division of this Court which in

fact, was filed and gave rise to a registration of CS 105 of 2021. After the service of summons the appellant entered appearance and sought for extension of time to file written statement which we are informed that the same was allowed.

In the meantime, an application under Order 12 Rule 6 of the Code of Civil Procedure has been taken out by the respondent for judgment on admission. It is contended by the respondent that the *jural* and contractual relationship of landlord and tenant between the parties and the notice under Section 106 of the Transfer of Property Act duly served upon the appellant having not disputed, therefore, it would be a mere formal exercise if the suit is decided after full-fledged trial as it would invite the same result. According to the respondent, the moment the tenancy is governed by the provision of the Transfer of Property Act and the notice under Section 106 of the Transfer of Property Act is valid and the service thereof has not been denied, it is a clear admission on the part of the appellant to pass a judgment on admission in favour of the respondents.

The said application is resisted by the respondent in the affidavit-in-opposition directed to be filed, which in fact was filed, primarily on the ground that there is no breach of terms and conditions of the said agreement and the said suit has been filed to harass the appellant as the respondent intended to create a third-party in respect thereof. It is further stated therein that the said agreement postulates a notice of 45 days in the event any breach has occurred so that the appellant may remedy the same and having not done so the foundation for termination of an agreement is illegal and invalid. It is further stated that the said agreement provides for service of notice at the registered office of the

appellant and not at the suit premises and, therefore, the same is invalid. A plea of the pandemic was also taken which impedes the progress of the business and ultimately compelled the appellant to close down the said shop and it was decided that no rent would be payable from the month of January, 2020 to October, 2020. There are other defence which were taken in relation to the withdrawal of the amenities, dishonor of the cheque issued by the appellant in favour of the respondent which was kept as a security but in our opinion, those are not relevant for the purpose of ascertaining whether there is a clear admission made by the appellant inviting the judgment on admission to be passed.

The Trial Court discarded all the contentions of the appellant and held that there is a clear admission at the behest of the appellant inviting the judgment to be passed for recovery of possession and also for arrear occupational charges upon adjusting a sum of Rs 7 lakhs which has been recovered by the respondent.

Both the counsels have relied upon several judgments on the nuances of Order 12 Rule 6 of the Code of Civil Procedure in order to convince the court that the judgment impugned in the instant appeal needs interference or it does not invite any interference. All the judgments which have been relied upon by the respective parties, which will be dealt separately hereinafter, voiced in unison that the provision contained under Order 12 Rule 6 of the Code of Civil Procedure can only be activated on an admission which is unconditional, unequivocal, clear and positive and does not require more than one possibilities. Even the judgment relied upon by Mr. Sen in case of ***Hari Steel & General Industries Ltd. & Anr.***

Vs. Daljit Singh & Ors., reported in (2019) 20 SCC 425 are suggestive of the aforesaid principles of law in the following:

“28. In the aforesaid judgment, while considering the scope of Order 12 Rule 6 CPC, post amendment by amending Act, 1976 this Court has held as under :

21. There is yet another provision under which it is possible for the court to pronounce judgment on admission. This is contained in Rule 6 of Order 12 which provides as under:

‘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.’

22. This rule was substituted in place of the old rule by the Code of Civil Procedure (Amendment) Act, 1976. The Objects and Reasons for this amendment are given below:

‘Under Rule 6, where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a 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. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule.’

23. Under this rule, the court can, at an interlocutory stage of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers the court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit.”

However, Mr. Sen is relying on the said judgment inviting our attention to the observations made in paragraph 29 thereof to the effect that mere admission of entering into the agreement/contract itself cannot be considered in isolation more particularly, without advertent to the further objections taken in the pleading. After the meticulous reading of the aforesaid report, we find that the Apex Court declined to pass a judgment on admission and the aforesaid findings were returned solely on the ground that the defence was taken that several pages of the agreement in question have been fabricated and

manufactured to suit the purpose of the plaintiff therein. It is no doubt true when the authenticity and the genuinity of the agreement is in question and the serious allegation has made that certain pages have been tampered, fabricated and/or manufactured which were not in existence when the parties entered into an agreement, it would not be proper to pass a judgment on admission without deciding the aforesaid objections having vital impact unless an opportunity is given to the defendant to prove the same by cogent evidence at the time of trial. It admits no ambiguity in our mind that mere existence of an agreement does not *ipso facto* render the judgment to be passed on admission, more particularly, when the authenticity and the genuinity of the said agreement is seriously questioned by the contesting litigant. The agreement should not be considered in isolation to the other evidences on a serious questions having raised thereupon and, therefore, it cannot be regarded as a clear, explicit and unequivocal admission.

The case of **S. M. Asif vs. Virender Kumar Bajaj, reported in AIR 2015 SC 3678** relied upon by Mr. Sen does not appear to have any manner of application in the present facts. In the said report, the Apex Court set aside the judgment on admission passed under Order 12 Rule 6 of the Code in a suit for eviction filed by the landlord against the tenant despite the admitted relationship of the landlord and tenant and the period of lease agreement. The tenant therein took a plea that during the currency of the *jural* relationship of landlord and tenant, an agreement for sale of the tenanted property was entered into and a substantial amount of money was advanced to the landlord and in fact, a suit for specific performance of the contract filed by the tenant is pending. In the

backdrop of the aforesaid facts, the Apex Court held “*when such issue arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order 12 Rule 6 of the Code of Civil Procedure*”.

It takes us to the another judgment of the Supreme Court rendered in case of ***Karan Kapoor vs. Madhuri Kumar, reported in 2022 SCC Online SC 791*** where the Apex Court interfered with the judgment on admission passed against the tenant in a suit for eviction as the facts emanates therefrom, are similar and identical to the facts involved in ***S. M. Asif (supra)*** in the following:

“23. Be that as it may, the arguments advanced by both the sides, in our view can be appreciated by the Trial Court by affording opportunity to them to lead evidence. As per the leadings, there may be admission to the extent of execution of the Lease Agreement, rate of rent and monthly payment but simultaneously the defense taken by the Defendant is also based on ATS-I, II and III. In view of the contents of those agreements and terms specified therein, the defense as taken by the Appellant/Defendant is plausible or not is a matter of trial which may be appreciated by the Court after granting opportunity to lead evidence by the respective parties. There may be admission with respect to tenancy as per lease agreements but the defense as taken is also required to be looked into by the Court and there is need to decide justiciability of defense by the full-fledged trial. In our view, for the purpose of Order XII Rule 6, the said admission is not clear and

categorical, so as to exercise a discretion by the Court without dealing with the defense as taken by Defendant. As we are conscious that any observation made by this Court may affect the merit of either side, therefore, we are not recording any finding either on the issue of tenancy or with respect to the defense as taken by the Defendant. We are only inclined to say whether the judgment and decree passed in exercise of the power under order XII Rule 6 of CPC is based on clear and categorical admission. In our view, the facts of the case in hand and the judgment in S.M. Asif (supra) are altogether similar, therefore, the ratio of the said judgment rightly applies to the present case. Consequently, the judgment and decree passed by the Trial Court, as confirmed by the High Court, only on admission of fact without considering the defense in exercise of power under Order XII Rule 6 of CPC is hereby set-aside. The matter is remitted back to the Trial Court to decide the suit as expeditiously as possible affording due opportunity to the parties to record evidence that shall be appreciated by the Court on merit.”

The ***Jeevan Diesels & Electricals Ltd. vs. Jasbir Singh Chadha (HUF) & Anr., reported in (2010) 6 SCC 601*** relied by Mr. Sen appearing for the appellant is a case where the judgment on admission was passed in deducing an admission which was conspicuously absent in the pleading filed in the Court. The parties thereto confined their submission on the pleadings filed in the said case and did not advert to an admission “otherwise” appearing in Order 12 Rule 6 of the Code of Civil Procedure. It was observed that there is no admission in the

written statement of the pleading filed by the defendant in the said proceeding on the termination of the tenancy and therefore, it cannot be regarded as a clear admission in these words:

“11. In Uttam Singh Duggal & Co. Ltd. v. United Bank of India the provision of Order 12 Rule 6 came up for consideration before this Court. This Court on a detailed consideration of the provisions of Order 12 Rule 6 made it clear ‘wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed’ the principle will apply. In the instant case it cannot be said that there is a clear admission of the case of the respondent-plaintiffs about termination of tenancy by the appellant in its written statement or in its reply to the application of the respondent-plaintiffs under Order 12 Rule 6.

12. It may be noted here that in this case parties have confined their case of admission to their pleading only. The learned counsel for the respondent-plaintiffs fairly stated before this Court that he is not invoking the case of admission ‘otherwise than on pleading’. That being the position this Court finds that in the pleadings of the appellant there is no clear admission of the case of respondent-plaintiffs.”

Lastly, Mr. Sen heavily relies upon a judgment of the Supreme Court in case of ***Himani Alloys Ltd. vs. Tata Steel Ltd., reported in (2011) 15 SCC 273*** for the proposition that the provisions contained in Order 12 Rule 6 of the

Code is an enabling provision which is neither mandatory nor peremptory. It is held that it is a discretion of the judge to pass a judgment on admission provided it satisfies the conscience that the defendant has made a clear and unequivocal admission entitling the plaintiff to get the relief either in entirety or in part.

All the aforesaid judgments relied upon by Mr. Sen echoed the principles behind the incorporation of the Order 12 Rule 6 of the Code of Civil Procedure that the admission should be clear, explicit, positive, unequivocal and unconditional. Such admission must be such, which does not invite any interpretation except the clear admission on facts entitling the plaintiff to get the judgment on admission on whole or on part of the claim. The provision contained in Order 12 Rule 6 of the Code is an enabling provision and cannot be regarded as mandatory or peremptory that the court has no other option but to pass a judgment on admission. It is a discretion of the judge either to declare judgment on admission or relegate the parties to trial to prove the facts. The intention sublime the incorporation of Order 12 Rule 6 is to avoid unnecessary delay in passing a decree and in other words, augments the speedy judgment and/or the reliefs which the plaintiff is otherwise entitled to without undergoing the rigorous provision of the evidence Act and/or a mode of proving thereunder. The admission is the best piece of evidence provided it is clear, positive and unconditional. The language employed under Order 12 Rule 6 is suggestive to the fact that it is not restricted to the pleading only as the word “otherwise” subsequently, incorporated by way of an amendment would be rendered meaningless. The admission which stairs on the face of the defendant, he has to face the consequences thereof and the Court should not unnecessarily invest time

in dealing with the cases and inviting the parties to lead evidence on an admitted facts.

The case of eviction of a tenant by the landlord, in particular, has to be dealt with great caution, more particularly, in the perspective of the nature of the tenancy and the protection having afforded under the Rent Restriction Act. The foremost duty cast upon the court is to first find out whether the tenancy is governed by a protection given under the State Rent Restriction Act, and if the answer is in positive, no judgment on admission should be passed because of the embargo having created therein. The case of the eviction of a lessee under the Transfer of Property Act stands on a different footing than of the State Rent Restriction Act, where certain protections have been given to the tenant against the eviction, what is not required in case of eviction under the Transfer of Property Act. The existence of the *jural* relationship of a landlord and tenant and the termination of the tenancy either by efflux of time or by notice served upon the tenant under Section 106 of the Transfer of Property Act, are *sine qua non* for passing the decree under the Transfer of Property Act. Obviously, the aforesaid two instances should be admitted by the lessee in the pleading or otherwise as held by the Supreme Court in ***Payal Vision Ltd. Vs. Radhika Choudhary (2012) 11 SCC 405*** in these words:

“7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiff landlord is the existence of the jural relationship of landlord and tenant between the parties and

the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the court can pass a decree in terms of Order 12 Rule 6 CPC, which reads as under:

‘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.’

8. The above sufficiently empowers the court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the plaintiff seeks to invoke the powers of the court under Order 12 Rule 6 CPC and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear

admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in Jeevan Diesels & Electricals Ltd. relied upon by the High Court where this Court has observed:

‘10. Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in Karm Kapahi may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.’ ”

The Division Bench of the Delhi High Court in case of **Surjit Sachdev vs. Kazakhstan Investment Services Pvt. Ltd. & Ors. reported in (1997) 66 DLT 54 (DB)** has succinctly expounded two ingredients for judgment on admission in a suit for eviction of a tenant i.e., the existence of relationship of lessor and lessee or entry in possession of the suit property by defendant and determination of such relation in any of the incidences envisaged under Section 111 of the Transfer of Property Act, in the following:

“17. The question now is that whether there is any admission or not so as to entitle the plaintiff to have a decree for possession. The factors which deserve to be taken into consideration in order to enable

the Court to pass a decree in plaintiff's favour as regards possession in such like suit. are: (a) existence of relationship of lessor and lessee or entry in possession of the suit property by defendant as a tenant; and (b) determination of such relation in any of the contingency, as envisaged in Section 111 of the Transfer of Property Act. One of the modes stated therein is by efflux of time limited by the lease. Only on unequivocal admission of the above two factors will entitle the plaintiff to a decree on admission. Admission need not be made expressly in the pleadings. Even on constructive admissions Court can proceed to pass a decreed in plaintiff's favour."

At the risk of the repetition in order to bring more clarity on the proportion of law concerning the provision under Order 12 Rule 6 of the Code of Civil Procedure, it is evidently clear that unless the admission of the tenant is such, we does not invite any other interpretation than the acceptance of the aforesaid two ingredients, it is imperative to pass a judgment on admission. Any other interpretation of the aforesaid provision would stultify the legislative intent behind its incorporation where the primary object is to avoid the wastage of time of the Court and the rigor of proving those facts under the Evidence Act. It is intended to secure the speedy reliefs to achieve the quick disposal of the litigation. Though it is a discretion of the judge to pass a judgment on admission yet, if the circumstances and the facts involved in the given case invite such exercise of discretion, the court must exercise judicially.

On the backdrop of the aforesaid legal proposition, it is examined whether the appellant has made a clear, unconditional and positive admission warranting the judgment to be passed on admission. Admittedly, the *jural* and contractual relationship of the landlord and tenant is accepted by the appellant. It is categorically admitted that the appellant no.1 was inducted as a monthly tenant by the respondent in respect of the shop room on the ground floor and mezzanine floor of Express Tower situate at 42A, Shakespeare Sarani, Kolkata-700017. On the basis of an agreement for lease executed in the month of January, 2016, it is also admitted that initially the agreed amount of rent was Rs. 1,40,000/- which was subsequently enhanced to Rs. 1,61,000/-. The appellant further accepted the factum of giving a sum of Rs. 7 lakhs as a security deposit at the time of execution of the lease agreement and the amenities agreement and carried on her business peacefully for a pretty long time. So far as the notice under Section 106 of the Transfer of Property Act, 1882 is concerned, a plea has been taken that in terms of the clauses in the lease agreement the same is required to be served at the registered office of the appellant but the same was served at the suit premises. Such being an admitted fact, the only question which involves is whether it satisfies the conditions required for passing a judgment on admission as enunciated in ***Payel Vision Ltd. (supra)***. The Apex Court has categorically held as quoted above that the moment the existence of *jural* or contractual relationship of landlord and tenant between the parties and the service of the notice under Section 106 of the Transfer of Property Act are admitted, it invites no other consequences but to pass a judgment on admission. Both the ingredients are found to exist in the pleading filed in the suit and

therefore, we do not find any impediment on the part of the Single Bench to pass a judgment on admission, even if the plea is taken that the period of notice fell short of being contrary to the terms of the lease agreement. It is undeniable that the suit was filed after the expiry of the aforesaid period. Merely because the notice contains shorter time to what agreed upon, the moment the suit is filed after the expiry of the said period it cannot invalid such notice. The period enshrined in the notice determining the tenancy is to inform the tenant that the landlord requires recovery of the possession and contemplates to initiate a proceeding before the Court of Law. In the event, the tenant fails to act on the requisition made therein, the validity of the notice cannot be effaced nor eroded if the suit is filed after the expiry of the period as agreed upon. Apart from the same, there is inconsistency in the stand of the appellant in the pleading concerning the notice; at one place it is submitted that since the lease agreement reserving a period for more than one year requires registration and sufficient stamp to be put thereupon, on the other hand, it relies upon its terms and conditions embodied therein. The relationship of landlord and tenant is created upon induction of a tenant into a tenanted premises and payment of rent to the landlord. The tenant cannot deny the title of the landlord in view of the estoppels created under Section 116 of the Evidence Act. There is no denial on service of notice upon the appellant and once the same is admitted the tenant cannot wriggle out of such admission.

It is further manifest from the instant case that the said tenancy is not protected under the West Bengal Premises Tenancy Act, 1997 because of the exemption provisions contained in the said act and admittedly governed by the

provision of the Transfer of Property Act. There is no protection against the eviction as envisaged in the West Bengal Premises Tenancy Act, 1997 available to the appellant. Section 111 of the Transfer of Property Act postulates that the lease determines on an expiry of the period given in a notice under Section 106 of the Transfer of Property Act and no protection in this regard has been given in any of the provisions contained in the said act.

From whatever angle this Court looks that we do not find any illegality and/or infirmity in the impugned judgment.

The appeal is thus dismissed.

No order as to costs.

Urgent Photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)

LATER:

After the judgment is delivered, learned advocate for the appellant prays for stay of operation of this order.

After considering the submissions and the prayer, we do not find that it is a fit case where we should accede to the prayer of the appellant. Hence, the prayer is refused.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)