IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.7622/2019

Sanjay V Dattatraya

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's Orders

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Mr. Y.J. Maheshwari, Adv for petitioner.
Mr. V.K. Paliwal, Adv for respondent.

CORAM : AVINASH G GHAROTE, J.
DATE : 08-02-2023

Heard Mr Maheshwari, learned Counsel for the petitioner.

2. The petition challenges the order dated 31-07-2018 passed below Exh-15 and judgment dated 06-08-2019 passed by the District Judge-9, Nagpur, dismissing the Civil Revision Application therefrom (pg 45). The learned Counsel for the petitioner by relying upon ***Charanjit Lal Mehra and others vs Kamal Saroj Mahajan (2005) 11 SCC 279*** (para 8) and ***Uttam Singh Duggal and Co. Ltd vs United Bank of India and others (2000) 7 SCC 120*** (paras 12 and 15) submits, that since an admission has been given by the respondent/tenant of having created a sub-tenancy a judgment on admission ought to have been passed by the trial Court by allowing the application below Exh-15. He further submits by relying upon ***Prem Prakash vs Santosh Kumar Jain and Sons (HUF) and others (2018) 12 SCC 637*** (paras 9, 10 15 and 31); ***A Mahalakshmi vs Bala Venkatram (dead) through Legal Representative and***

another (2020) 2 SCC 531, *Gajanan Dattatraya vs Sherbanu Hosang Patel, (1975) 2 SCC 668* and *Balvant N. Viswamitra and others vs Yadav Sadashiv Mule (dead) through Lrs and others (2004) 8 SCC 706*, that the parting of possession either wholly or in part, would clearly amount to an admission of tenancy or sub-tenancy on part of the respondent/tenant entitling the petitioner landlord for judgment on admission. He further points out that the respondent/tenant though had filed a suit u/s 6 of the Specific Relief Act, 1963, against the sub-tenant, the same was dismissed in default on 11-02-16 and no steps have been taken for its restoration (pg 23), which would indicate, the collusion between the respondent/tenant and sub-tenants and also substantiates the plea of sub-letting.

3. To appreciate the contention regarding admission, of having created a sub-tenancy, the averments in para 2 of the written statement of the respondent in RCS No.344/17, need to be looked into and for the sake of ready reference, quoted as under :-(pg 20)

> *"AS TO PARA 2 to 7 :- The contents of this para are denied in toto as false frivolous and twisted one, initially the defendant was tenant in the premises, subsequently. That in the month of September 2009 first week the said Vinod Ashtankar and his brother who are relative, visited the Defendant and asked the Defendant to allow them to keep their repairing instrument inside the shop and they will do the work of repairing on open space just in front of shop for period of 2 or 3 months as they are looking for shop in near vicinity as their business is expanding. Believing the word and having faith in the said Vinod*

his brother, the Defendant allow the plaintiff them to keep tools of repairing and work on open space in front of the said shop. It is specifically submitted here that on 21-9-2009 the Defendant no.2 fell ill due to malarial fever with Hepato Renal Syndrome and admitted in the hospital for the treatment. The Defendant is already is the patient of hypertension and diabetic. It is therefore the situation of the Defendant was complicated and critical. The Defendant continued under medical observation till the first week of February 2010. The Defendant is still recuperating i.e. still recovering from said illness. As above said the Defendant have therefore very less time to visit the said shop. The keys of the said shop are with the Vinod and his brother as they were working there. That on 22nd of March 2010 the Defendant got call from plaintiff and visited his plaintiff on same day and got surprised when the plaintiff handed over the notice of RCS No.93/2010 filed by the said vinod against the plaintiff before Hon'ble 2nd Additional Judge Small Causes Court at Nagpur for "Suit for declaration and permanent injunction. The Defendant along with the said suit notice visited his shop to ask the real fact about the suit. The said Vinod have filed above said suit before Hon'ble 2nd Small Causes Court by obtaining documents from cabin of the suit property as due to illness the Defendant was irregular in visiting the suit property. The said Vinod and his brother stopped the Defendant from entering the suit shop and not allowed the Defendant to enter in the premises. The said vinod and his brother again told the Defendant they have already filed suit in court of law and they are the tenant of Mr. Sanjay B. Gandhi and this Defendant is nobody. By this behavior the Defendant is completely shocked and constrained to file police complaint before Dhantoli Police. The police officer on duty registered the complaint as non-cognizable bearing No.112/2010 and directed the Defendant to

approach the court of law. It is therefore the story which is canvassed in these paras are totally false as the plaintiff knows all the facts and intentionally suppressed it for this Hon'ble Court."

4. In ***Charanjit Lal Mehra and others*** (supra), while considering what would amount to an admission for the purpose of Order 12 Rule 6 of the Code of Civil Procedure (for short, 'CPC'), it has been held as under :-

"In fact, Order 12 Rule 6 CPC is enacted for the purpose of an in order to expedite the trials if there is any admission on behalf of the defendants or an dispute; then, in such a case in order to expedite and dispose of the matter such admission can be acted upon."

5. In ***Uttam Singh Duggal and Co. Ltd*** (Supra), on the same point, the Hon'ble Apex Court in paras 12 and 15 has held as under :-

"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.

15. Even without referring to the expression "otherwise" in Rule 6 of Order 12 CPC, we can draw an inference in the present case on the basis of the pleadings raised in the case in the shape of the applications under that Rule and the answering affidavit which clearly reiterates the admission. If that is so, interpretation of the expression "otherwise" becomes unnecessary."

6. It is, therefore, necessary to see, Sec. 17 of the Evidence Act, 1872, defined what is meant by an admission, as under :

"17. Admission defined.—An admission is a statement, 1 [oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned."

7. From the above position, it is therefore clear that for a statement to amount to an admission it has to be clear, precise and specific, in relation to the allegations, in relation to the plea, which is claimed to be admitted therein, and made by the person against whom it is sought to be used.

8. In so far as sub-tenancy is concerned, in ***Prem Pakash*** (supra), indicates the same, as under :-

> *"18) Sub-tenancy or sub-letting comes into existence when the tenant gives up possession of the tenanted accommodation, wholly or in part, and puts another person in exclusive possession thereof. This arrangement comes about obviously under a mutual agreement or understanding between the tenant and the person to whom the possession is so delivered. In this process, the landlord is kept out of the scene. Rather, the scene is enacted behind the back of the landlord, concealing the overt acts and transferring possession clandestinely to a person who is an utter stranger to the landlord, in the sense that the landlord had not let out the premises to that person nor had he allowed or consented to his entering into possession of that person, instead of the tenant, which ultimately reveals to the landlord that the tenant to whom the property was let out has put some other person in possession of that property. In such a situation, it would be difficult for the landlord to prove, by direct evidence, the contract or agreement or understanding between the tenant and the sub-tenant. It would also be difficult for the landlord to prove, by direct evidence, that the person to whom the property had been sub-let had paid monetary consideration to the tenant. Payment of rent, undoubtedly, is an essential element of lease or sub-lease. It may be paid in cash or in kind or may have been paid or promised to be paid. It may have been paid in lump sum in advance covering the period for which the premises is let out or sub-let or it may have been paid or promised to be paid periodically. Since payment of rent or monetary consideration may have been made secretly, the law does not require such payment to be proved by affirmative evidence and the court is permitted to*

draw its own inference upon the facts of the case."

9. In ***A. Mahalakshmi*** (supra), the same has depicted as under :-

"8. Subletting means transfer of an exclusive right to enjoy the property in favour of the third party. To constitute a subletting, there must be a parting of legal possession, i.e., possession with the right to include and also right to exclude others. Subletting, assigning or otherwise parting with the possession of the whole or any part of the tenancy premises, without obtaining the consent in writing of the landlord, is not permitted and if done, the same provides a ground for eviction of the tenant by the landlord. When the eviction is sought on the ground of sub letting, the onus to prove subletting is on the landlord. As held by this Court in the case of Associated Hotels of India Limited v. S.B. Sardar Ranjit Singh, AIR 1968 SC 933, if the landlord prima facie shows that the third party is in exclusive possession of the premises let out for valuable consideration, it would then be for the tenant to rebut the evidence. At the same time, as held by this Court in the case of G.K. Bhatnagar v. Abdul Alim, (2002) 9 SCC 516 and Helper Girdharbhai v. Saiyed Mohmad Mirasaheb Kadri, (1987) 3 SCC 538, where a tenant becomes a partner of a partnership firm and allows the firm to carry on business in the premises while he himself retains the legal possession thereof, the act of the tenant does not amount to subletting. It is further observed and held that however inducting the partner in his business or profession by the tenant is permitted so long as such partnership is genuine. It is further observed that if the purpose of such partnership is ostensible in carrying on business or profession in a partnership but the real purpose in subletting such premises to such other person who is

inducted ostensibly as a partner then the same shall be deemed to be an act of sub letting."

10. In the same judgment after considering ***Celina Coelha Pereira vs Ulhas Mahabaleshwar Kholkar (2010) 1 SCC 217***, the principles laid down therein have been quoted out of which propositions (i) and (vi), in para 25 therein, have been relied upon, which are as under :-

"(i) In order to prove mischief of subletting as a ground for eviction under rent control laws, two ingredients have to be established, (one) parting with possession of tenancy or part of it by tenant in favour of a third party with exclusive right of possession and (two) that such parting with possession has been done without the consent of the landlord and in lieu of compensation or rent.

(vi) In other words, initial burden lying on landlord would stand discharged by adducing prima facie proof of the fact that a party other than tenant was in exclusive possession of the premises. A presumption of subletting may then be raised and would amount to proof unless rebutted."

11. In ***Gajanan Dattatraya*** (supra), it has been held that it would be enough if the unlawful sub-letting is proved on the date of the notice and any subsequent vacation of the premises by the sub-tenant would not enure to the benefit of the tenant. ***Balwant N. Viswamitra and others*** (supra), holds that for the suit for eviction of a tenant on the ground of sub-letting, it is not necessary to join the sub-tenant as party to the suit.

12. Testing the plea of admission and sub-tenancy on the above propositions, a perusal of para 2 of the written statement of the defendant (pg 20) would indicate that what has been stated is that one Vinod Ashtankar and his brother were permitted to keep their repairing instruments inside the shop. It is further admitted that the keys of the suit shop were with Vinod Ashtankar and his brother as they were working there. These averments would categorically demonstrate an admission on part of the defendant, that the defendant was not in possession of the premises in question but it was the said Vinod Ashtankar and his brother, who were in possession. The factum of handing over the keys of the suit shop is in fact voluntary and not otherwise. Though the same is tried to be justified on the ground that they were handed over to the said Vinod Ashtankar on account of the illness of the respondent, the fact remains that in the first instance too, the said Vinod Ashtankar was permitted to place his repairing instruments inside the shop, and was thereafter handed over the keys of the shop which would indicate that the possession of the shop was delivered to the said Vinod Ashtankar.

13. What is also material to note is that the said Vinod Ashtankar had filed RCS No.93/2010, before the Additional Judge, Small Causes Court, against the present petitioner claiming that he was the lawful tenant of the suit shop as the present respondent who had shifted to another premises had handed over the possession to him, which plea has been rejected by the learned Additional Judge, Small Causes Court, by his judgment dated 09-12-15 dismissing

the suit, which dismissal has been confirmed in RCA No.61/2016 decided on 30-09-22.

14. That apart though the present respondent/tenant had filed a suit u/s 6 of the Specific Relief Act for restoration of the suit shop on the allegation that on 22-03-2010 the said Vinod Ashtankar had dispossessed him, the written statement of the respondent in RCS No. 344/17 indicates that even prior thereto the keys of the suit shop were voluntarily handed over by the respondent, to the said Vinod Ashtankar and his brother and so also the possession was also handed over as it was claimed that they were working there. It is also material to note that RCS No.416/10 filed by the present respondent against Vinod Umaji Ashtankar and Ravi Umaji Ashtankar for restoration of shop no.11 in Shriram Building, Dhantoli, Nagpur, the suit came to be dismissed in default on 11-02-2016 and till date no application has been filed under Order 9 Rule 9 of the CPC or any provision for restoration of the suit as per the statement of Mr Paliwal, learned Counsel for the respondent/tenant.

15. For an averment to be considered as a admission for the purpose of Order 12 Rule 6 of the CPC, the said admission should be clear, precise and specific. The averments in para 2 of the written statement of the respondent before the trial Court, categorically admits that he was permitting the said Vinod to occupy a portion of the suit shop by permitting to him to keep his repairing instruments inside the shop and also admits that the keys

of the said shop were with Vinod Ashtankar and his brother as they were working there, which would indicate exclusive possession of said Vinod Ashtankar and his brother of shop no.11. That coupled with the admission that Vinod Ashtankar had filed RCS No.93/10 against the present petitioner and the respondent claiming to be in exclusive possession of shop no.11 as a tenant therein as indicated from the averments, in para 2 of the written statement would add to the above admission.

16. The requirement of Sec. 16 (1)(e)(ii) of the Maharashtra Rent Control Act, 1999, is parting of possession in any mode or manner whatsoever or assigning or transferring his interest in any manner to a third person. The averments in para 2 of the written statement of the respondent clearly indicate the parting of possession of the premises with the Vinod Ashtankar as both the acts initially of permitting him to keep his repairing instruments inside the shop as well as handing over the keys were voluntary in nature.

17. The order below Exh-15 dated 31-07-18 indicates the rejection of the said application on the ground that the admission was not given by Vinod Ashtankar and therefore cannot be used against him. This is a totally fallacious position for the reason that in the instant case it was the admission of the defendant/respondent which is material and not of a Vinod Ashtankar. As indicted above, the admission in para 2 of the written statement was clear and unequivocal, considering which, the reasoning given by

the trial Court for its rejection of Exh-15 does not appeal to me.

18. The appellate Court in his judgment has summarized the entire position in a few lines in para 10 (pg 45) without addressing the issue raised before it at all, as there is no discussion as to whether the averments made in para 2 of the written statement by the defendant/respondent indeed amounted, to an admission or not.

19. In view of the above discussion, the order dated 31-07-18 passed by the Small Causes Court below Exh-15 as well as the judgment of the appellate Court in revision dated 06-08-19 are hereby quashed and set aside and the application below Exh-15 is hereby allowed, holding that in view of the admissions of the respondent/tenant as contained in para 2 of the written statement before the trial Court, there shall be a decree of eviction on admission in respect to the suit premises against the respondent, and the respondent is hereby directed to handover the vacant and peaceful possession to the petitioner.

20. A decree be drawn up accordingly.

JUDGE