



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: July 3, 2023*

+ RFA(COMM) 49/2023 & CM APPL. 13814/2023

M/S DENTEDGE HEALTHCARE PVT. LTD  
& ANR.

..... Appellant

Through: Mr. Vishal Chaudhary and Mr. Vivek  
Jha, Advs.

versus

SHRI V.C. JAIN

..... Respondent

Through: Mr. Sekhar Dasi, Mr. S.K. Gupta and  
Mr. Ayush Dasi, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

**V. KAMESWAR RAO, J. (ORAL)**

1. This appeal has been filed by the appellants challenging the order dated September 6, 2022 of the District Judge (Commercial Court)-03, Patiala House Courts, New Delhi in CS (COMM) No. 133/2022 whereby the learned District Judge has decided the application filed by the appellants herein under Order VII Rule 11 CPC and by the respondent herein under Order XII Rule 16 read with Order XV(A) CPC.

2. The suit has been filed by the respondent herein for possession of flat bearing No. 8/78, First Floor, Janpath, New Delhi and recovery of damages etc. against the appellants herein. The case of the respondent before the learned District Judge is that



he is the owner of the above flat and the same was let out to the appellants on August 1, 2016 on monthly rent of ₹31,000/- exclusive of water, maintenance and other charges vide lease deed dated August 12, 2016. Initially, the flat was let out to appellant No.2 vide lease deed dated May 17, 2016. The appellant No.2 vide her letter dated June 20, 2016 expressed her inability to continue with the tenancy and on her request, the tenancy was changed in the name of the appellant No.1 with the lease deed signed by the appellant No.2 on behalf of the appellant No.1. As per the lease deed, the rent would be increased by 5% after the expiry of every year.

3. The case of the respondent before the learned District Judge was that since March, 2020, the appellant No.1 stopped paying rent and a sum of ₹7,16,100/- for the period from March 1, 2020 to December 31, 2021 became due and payable by the appellants. The appellants also stopped paying the electricity charges which made the respondent pay ₹41,142/- on December 9, 2019, ₹22,800/- on August 6, 2020, ₹4,923/- on October 27, 2023 and ₹6,106/- on January 19, 2021, totalling ₹74,971/- to the NDMC to avoid disconnection. Despite repeated requests, the appellants did not clear the outstanding liabilities either.

4. It is stated that a notice was issued on December 13, 2021 calling upon the appellants to pay the arrears of rent, electricity charges etc. totaling to ₹8,00,336/- along with interest and also terminating the tenancy from the midnight of December 31, 2021,



calling upon them to hand over the vacant and physical possession of the tenanted premises.

5. It was the case of the respondent that w.e.f January 1, 2022, the occupation of the appellants in the tenanted premises became unauthorised and they are liable to pay mesne profits / damages.

6. A written statement was filed by the appellants wherein it is stated that the respondent has not shown any document regarding ownership of the property. The alleged transaction that took place between the parties is not commercial in nature. The lease deed is an unregistered document and has no evidentiary value. The respondent did not comply with the provisions of Section 12(A) of the Commercial Courts Act, 2015 before filing the suit. It was also stated that appellant No.2 admitted the execution of the lease deed of the property and the tenancy was transferred in the name of the appellant No.1 and a fresh lease deed was executed.

7. It was the case of the appellants that during the period of tenancy, the plaintiff / respondent on several occasions offered to sell the property to the appellants, but since the carpet area of the property was less than the requirement of the appellants, they declined. In February 2020, respondent again approached them with a proposal for making an investment of ₹20 lakhs in the property, whereby the carpet area of the property would be doubled by making structural changes and adding a mezzanine floor. It was also proposed to sell the property for a consideration of ₹35 lakhs. The appellants accordingly made an investment of ₹20 lakhs.



8. It is stated that after entering into an understanding, the lease deed and relationship of the landlord and tenant came to an end. After February 2020 neither did the respondent demand rent nor the appellants paid any. When the respondent failed to honour his commitment, they filed an application before the Police Station, Barakhamba Road, New Delhi on June 26, 2020. It was also their case that the respondent was asked to provide the title documents of the property and enter into a sale agreement as promised by the respondent, but the respondent did not do so.

9. The learned District Judge has dismissed the application under Order VII Rule 11 and allowed the application under Order XII Rule 6 read with Order XV(A) of the CPC by stating in paragraph 13 onwards as under:

*“13. In the present case, the plaintiff has claimed himself to be the owner of the Flat no. 8/78, First floor, Janpath, New Delhi. Written statement finds mention that the lease deeds bear the signatures of the defendants. While executing the lease deed, defendants never stated that plaintiff is not the owner of the premises in question. As per the averments made in the written statement, the defendants had agreed to the proposal of the plaintiff that after an investment of Rs. 20.0 lakh to be made by them, the carpet area of the property would be doubled by making structural amendments by adding a mezzanine floor. Had the plaintiff been not the owner of the property as alleged, this agreement or understanding would have not been there. Further, the record and the averments made in the written statement show that the defendants continued paying the rent till February, 2020 and during the said period, they never raised objection as to the ownership of the plaintiff over the suit premises nor demanded the ownership documents from the plaintiff. In the case of Anthony v/s K.C*



*ITT OOP and Sons and Drs, (2000) 6 SCC 394, it was held that if a owner of a building inducts a person into possession of the building and such person pays or agrees to pay monthly rent, in such circumstances, notwithstanding that they had executed only an unregistered lease deed for a period exceeding one year, the relationship between them would be that of landlord and tenant. It was held that when a lease is a transfer of a right to enjoy the property and such transfer can be made expressly or by implication as provided under Sections 105 and 107 of the Transfer of Property Act, the mere fact that an unregistered document came into existence, would not stand in the way of the court to determine there was in fact a lease otherwise than through such deed. The averments regarding the landlord-tenant relationship, the execution of lease deed by the parties are clear, unequivocal and absolute.*

*14. The lease deed shows that the rate of rent was Rs. 31000/- per month minus TDS i.e. more than Rs. 3500/- thus, out of the purview of Delhi Rent Control Act as held in the case of Nopany Investments (P) Ltd v/s Santokh Singh (HUF), (2008) 2 SCC 728.*

*15. Defendants in the written statement have admitted that they have not paid the rent/arrears of rent since March, 2020. The legal notice sent by the defendants has also been admitted by the defendants as evident from their reply and the rejoinder sent by plaintiff to their reply. The defendants even in the written statement have not denied the receipt of the legal notice dated 13.12.2021 whereby the tenancy was terminated from the expiry of midnight of 31.12.2021. Though in the affidavit of admission-denial of documents, defendants have denied these documents but written statement filed by the defendants show their admission qua the said documents. It was held in the case of Sanjiv Pathak (supra) that, if the possession is as a tenant and the tenancy has been determined, the appellant has to go out of the possession.*



16. In the case of *Jiwan Dass Rawal v/s Narain Das*, AIR 1981 Del 291, it was held that an agreement purchaser has no right in the premises not only till a decree for specific performance of the said agreement is passed but also till the conveyance deed in pursuance thereto is executed. In the present case, the defendants have not filed a single document as to the payment of Rs. 20.0 lakhs to the plaintiff towards the alleged proposal given by the plaintiff. The plaintiff in replication has denied having received any such amount or having made any such proposal. In the case of *Mohd. Raza and ors (supra)*, the defendants were claiming the ownership of the property. The plaintiff had filed a suit as an owner. Defendants had instituted the suit for specific performance against the plaintiff w.r.t the suit property. It was held that at this stage, defendant no.2 cannot be said to be an owner as her suit for specific performance is yet to be decided. High Court has rightly passed decree of possession under Order 12 Rule 6 CPC. It was held in the case of *Punjab and Sind Bank (supra)* that in a suit for possession, plaintiff has to prove existence of landlord-tenant relationship between the parties, rent of the premises being more than Rs. 3500/- per month so as not to attract the provisions of Delhi Rent Control Act and also termination of tenancy by efflux of time or by a valid notice sent by plaintiff to the defendants in Section 106 of the Transfer of Property Act. It was also held that service of notice is not of much importance since service of summons in suit along with plaint itself amounts to notice under Section 106 of the Act.

17. In the present case as evident from the pleadings, there are clear and unambiguous admission by the defendants as to the existence of landlord-tenant relationship, rate of rent being more than Rs. 3500/- going beyond the purview of Delhi Rent Control Act and service of legal notice dated 13.12.2021 terminating the tenancy of the defendants. In the case of *Afsal Baker v/s Maya Printers*, CRP No. 640 of 2015, decided on 09.12.2016 by the High Court of Kerala at Ernakulam, it was held that right to evict a tenant on



*expiry of the lease is a statutory right under the Transfer of Property Act.*

*18. It is well settled law that a decree on admission under Order 12 Rule 6 can be passed in the cases where clear, unambiguous and unequivocal admission has been made by one party of the case of the other party. In the case of Charanjit Lal Mehra v/s Kamal Saroj Mahajan, AIR 2005 SC 2765, it was held that Order 12 Rule 6 is enacted for the purpose of and in order to expedite the trials and if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute, then in such a case, in order to expedite and dispose of the matter, such admission can be acted upon. The object of the provision under Order 12 Rule 6 CPC is to enable a party to obtain speedy judgment atleast to the extent of the relief which according to the admission of the opposite party is entitled to. In the present case, there is clear, absolute, unequivocal and unambiguous admission on the part of the defendants.*

*19. In the light of above discussions, **the application of the plaintiff under Order 12 Rule 6 CPC is allowed. A decree of possession in respect of Flat No. 8/78, First Floor, Janpath, New Delhi-110001 as shown in red colour in the plan is passed in favour of plaintiff and against the defendants.***

*20. As regards application of the defendants under Order VII rule 11 that this court has no jurisdiction to entertain this suit since the property in question is not a commercial property or that provisions of Section 12A of the Commercial Courts Act have not been invoked, in the preceding paras, these contentions have already been dealt with. I am of the view that suit of the plaintiff is maintainable in its present form.*

*21. As regards payment of arrears of rent/mesne profit as prayed Order 15A CPC provides that in a suit by an owner/lessor for eviction of an unauthorized*



occupant/lessee or for the recovery of rent and future mesne profits from him, the defendant shall deposit such amount as the court may direct on account of arrears upto the date of order and thereafter, continue to deposit in each succeeding month the rent claimed in the suit as the court may direct. It further provides that upon default by the defendant in making the deposit, the defence of such a defendant may be struck off. In the case of Prem Lata v/s Raglubir Rai & Drs , CS (OS) 169812011, the High Court vide order dated 03.12.2013 made a reference of the order of Division Bench in FAO (OS) 519/2013 dated 18.11.2013 and held that the word 'rent' in order 15A CPC is not limited to the admitted rent. The object of this provision is to provide the landlord with some amount for dues and occupation of the property by the defendant during the pendency of the litigation. In Raglubir Rai v/s Prem Lata and anr, 211/2014 DLT 516 (DB), the Division Bench held that in eviction proceedings, the court in exercise of powers under Order 15A of CPC is not incapacitated from directing deposit at a rate higher than that admitted by the defendant. The said order was challenged in the Supreme Court vide SLP 24409/2014 which was dismissed vide order dated 22.09.2014.

22. It is an admitted case of the parties that when the parties entered into the lease deed, defendants had agreed to pay Rs. 31000/- per month less IDS with 5% increase on every year. The defendants have not paid the rent since March, 2020. The plaintiff is therefore entitled to arrears of rent/lease w.e.f. March, 2020. I am of the view that this court in the exercise of powers under Order 15A of the CPC is empowered to direct deposit at such rate as the erstwhile tenant/defendant may on the basis of material on record be found to have agreed to pay to the landlord for the said period.

23. In the light of above discussions, exercising the powers under Section 15A of CPC, the defendants are directed to deposit arrears of rent/mesne profit at Rs. 31,000/- per



*month w.e.f. March, 2020 upto 31.01.2022 within three months from today in the form of FDR in the name of the court. The defendants are further directed to deposit the rent/mesne profit at the said rate on or before 10<sup>th</sup> of every month in the court till the premises is vacated by the defendants in terms of the aforesaid order. This is without prejudice to the rights of the parties and till the outcome of the suit.”*

10. Mr. Vishal Chaudhary, learned counsel appearing for the appellants would submit that it is the specific case of the appellants that the respondent had agreed to sell the property in question by an oral agreement and since such an issue is triable issue, the application under Order XII Rule 6 read with Order XV(A) could not have been allowed. In support of his submission, he has relied upon the judgment of the Supreme Court in the case of **Karan Kapoor v. Madhuri Kumar, Civil Appeal No. 4645/2022** decided on July 6, 2022. That apart, he submits that there is no admission of the appellants to enable the District Judge allow the application under the said provision. In this regard he has drawn our attention to the application filed under Order XII Rule 6 CPC and reply to the application filed by the appellants herein. He states that the impugned order is required to be set aside relegating the parties to trial.

11. On the other hand, Mr. Sekhar Dasi, learned counsel appearing for the respondent would justify the order passed by the learned District Judge by stating that there was no agreement written or otherwise, between the parties wherein the respondent had decided to sell the property in question to the appellants.



According to him, even an agreement to sell of an immoveable property is required to be executed by way of a registered deed. In the absence of any proof / evidence that such an agreement was executed, the plea advanced on behalf of the appellants cannot be accepted. That apart, it is the conceded case of the appellants that they have not initiated any litigation seeking specific performance of the so-called oral agreement. He submits that it is a settled law that till such time the ownership of the appellants is established, there is a presumption based on the lease deed, that the relationship between the parties is that of landlord and tenant and it is the lease deed which would govern the same. He submits that the appellants have admitted the relationship of the landlord and tenant with the respondent herein. Even the rent is not disputed. That apart, termination of tenancy has been admitted. It necessarily follows that there is no defence available to the appellants to justify their continuance after the termination of the tenancy. In support of his submissions, he has relied upon the following judgments:

- 1. Mohd. Raza and Ors. v. Geeta reported as AIR 2021 SC 4826**
- 2. Sanjiv Pathak v. Som Nath & Ors. Reported in 2013 (204)DLT 667**
- 3. Raghubir Rai v. Prem Lata & Anr. reported as 2014 (211) DLT 516 (DB)**

12. Learned counsel for the parties have filed their written submissions during the hearing. The same are taken on record.

13. Having heard the learned counsel for the parties and perused the record, we are of the view that the learned District



Judge is justified in dismissing the application under Order VII Rule 11 CPC and allowing the application under Order XII Rule 6 read with Order XV(A) of the CPC. This we say so because of the conclusion drawn by the learned District Judge, which we have already reproduced above.

14. In so far as the reliance placed by the learned counsel for the appellants on the Judgment of the Supreme Court in the case **Karan Kapur (supra)** is concerned, the same has no applicability in the facts of this case, inasmuch as in the said case, it is clearly held that the parties therein had executed the agreements to sell in respect of property in question and as such, the defence taken is plausible which is required to be decided in the Trial. But it is not such a case of the appellants here. It was in that factual scenario Supreme Court was of the view that the issue is a triable one and it needs to be decided at the time of trial.

15. The issue which falls for consideration in the facts of this case can be seen from the perspective of the Judgment relied upon by the learned counsel for the respondent in the case of **Mohd. Raza and Ors. (supra)** wherein in paragraph 9, the Supreme Court has held as under:

*“It is to be noted at this stage that defendant No.2 cannot be said to be the owner as her suit for specific performance is yet to be decided by the learned Trial Court. Unless and until there is a decree passed in her favour and the decree for specific performance is passed and/or the sale deed is executed pursuant to such a decree, she cannot be said to be the owner of the suit property. Till the suit for specific performance is decided, the plaintiff – respondent herein*



continues to be the owner and defendant No.1 – appellant herein continues to be the tenant. In the written statement in paragraph 1, it is specifically stated by the defendants that the defendants are not ‘now’ the tenant of the plaintiff but the actual owner of the suit property. As observed hereinabove, till the suit for specific performance is decided in favour of the defendants, more particularly defendant No.2, she cannot be said to be the owner and that therefore the plaintiff – respondent herein continues to be the owner and defendant No.1 continues to be the tenant. Therefore, the aforesaid is rightly treated as an admission on behalf of the defendants with respect to the ownership of the plaintiff and that defendant No.1 is a tenant. Therefore, the High Court as such has rightly passed the decree on admission under Order XII Rule 6 of CPC which in the facts and circumstances of the case cannot be said to be erroneous. However, at the same time, when the substantive suit filed by defendant No.2 against the plaintiff for specific performance is pending, it is to be observed that the decree passed by the High Court by the impugned judgment and order shall always be subject to the outcome of the said suit filed by defendant No.2 against the plaintiff and if ultimately she succeeds in the suit, and a decree for specific performance is passed and the learned Trial Court passes the decree for possession (if prayed), then necessary consequences shall follow and the plaintiff, subject to filing the appeal, shall have to abide by the decree that may be passed in the suit for specific performance. It also goes without saying that any injunction granted by the learned Trial Court in the suit filed by defendant No.2 for specific performance of the contract shall also not be affected unless subsequently the order of injunction if any in favour of defendant No.2 is modified by the learned Trial Court.”

(emphasis supplied)



16. Concedingly, no suit has been filed seeking specific performance of the so-called agreement to sell. The rent and termination of the tenancy having not been denied by the appellants, the foregone conclusion is that the appellants could not have continued to hold the property in question. In fact, learned counsel for the appellants had not made any submission on the merit of application under Order XII Rule 6 of CPC.

17. We do not see any merit in the appeal. The same is dismissed. No costs.

**V. KAMESWAR RAO, J**

**ANOOP KUMAR MENDIRATTA, J**

**JULY 3, 2023/jg**

