



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % ***Date of Judgment: 01.06.2023***

+ **RFA 468/2023**

COIR BOARD

..... Appellant

Through: Mr. Abhay Kumar, Mr. Pankaj
 Jaiswal and Mr. Shagun Ruhil,
 Advocates.

versus

USHA MALIK

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

GAURANG KANTH, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 31295/2023 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CM APPL. 31296/2023 (delay in re-filing)

3. This is an application filed by the Appellant seeking condonation of delay of 19 days in re-filing the present appeal.
4. For the reasons stated in the application, the same is allowed.
5. Delay of 19 days in re-filing the present appeal is condoned.
6. The application stands disposed of.

RFA 468/2023 and CM APPL. 31294/2023 (stay)

7. The Appellant (original Defendant), in the present appeal, is assailing the impugned judgment and decree dated 15.02.2023 passed by the learned Additional District Judge-04, South-East District, Saket



Courts, New Delhi in CSDJ262/22 titled as ***Usha Malik (Sr. Citizen) Vs. Coir Board.***

8. Learned Trial Court, *vide* the impugned judgment, was pleased to decree the ‘suit for possession, illegal and unauthorized use and occupation charges and mesne profit’ filed by the Respondent (original Plaintiff) against the Appellant.

9. Smt. Ishwar Devi was the absolute owner of the suit property bearing No. 12-A, Basement admeasuring 344 sq. ft. in the multistoried building known as Mansarover situated at 90, Nehru Place, New Delhi-110019 alongwith necessary amenities, fixtures, fittings, electrical and sanitary fittings (herein referred to as the “***suit property***”). The Appellant is a part of Micro, Small and Medium Enterprise, Government of India.

10. The Appellant was inducted into the suit property as a tenant by Smt. Ishwar Devi in the year 1975. The lease agreement between the parties was renewed from time to time. The last such lease renewal agreement was executed between Smt. Ishwar Devi and the Appellant on 14.02.2019 for a period of 3 years commencing from 26.07.2018 to 25.07.2021. As per the said lease agreement, the monthly rent was fixed as Rs. 6,529/-excluding electricity, water, and maintenance charges.

11. Smt. Ishwar Devi died *intestate* on 16.11.2019 leaving behind two daughters and one son. The other legal heirs of late Smt. Ishwar Devi executed a registered relinquishment deed dated 07.12.2021 in favour of the Respondent herein, thereby relinquishing their respective rights in the suit property in favour of the Respondent. Therefore, after the death of Smt. Ishwar Devi, the Respondent became the owner of the suit property. The lease deed between Smt. Ishwar Devi and the Appellant expired on 25.07.2021 by efflux of time. Thereafter, the Respondent was not



interested in extending the lease. Hence, *vide* legal notice dated 29.09.2021, the Respondent terminated the lease and asked the Appellant to vacate the suit premises. On failure of the Appellant to vacate the suit premises, Respondent filed a suit for possession, illegal and unauthorized use and occupation charges and mesne profit, *inter alia*, with the following prayers: -

“a) Pass a Decree for Possession in respect of the suit property bearing no. 12A, floor no. Basement measuring a covered area of about 344 Sq.Ft. in the multistoried building known as Mansarovar Situated at No. 90, Nehru Place, New Delhi-110019 in favor of the Plaintiff and against the defendant;

b) pass a Decree for a sum of Rs. 58,761/- towards illegal and unauthorized use & occupation charges for the months of August till March, together with pendent lite and future interest @ 18% p.a. from the date of suit till realization, in favour of the plaintiff and against the defendant and Direct the Defendant to pay the said amount in whole.

c) Pass a Decree for pendente-lite, further and future mesne profit from the date of institution of the suit till delivery of possession of the suit property by the defendant to the plaintiff for any other or further sum, as this Hon'ble Court may deem fit and proper in the facts & circumstances of the Case, together with pendent lite and future interest @ 18% p.a. from the date of suit till realization;

d) Pass a decree thereby directing the defendant to pay all the unpaid statutory dues including water, electricity and maintenance charges from the date the same are unpaid till the actual handing over of the possession by the Defendant to the plaintiff.

e) Award the Cost of the suit to the Plaintiff;

F) Any other order or orders which this Hon'ble Court may deem fit and proper may also be passed in favour of the Plaintiff and against the Defendant.”

12. The Appellant filed their written statement admitting the fact that they were tenants of late Smt. Ishwar Devi. It was stated by the Appellant that the Appellant was in possession of the rented premises since 1975. Smt. Ishwar Devi inducted them into the suit premises as a tenant and the lease deed between parties was renewed from time to



time. It was further stated by the Appellant that Smt. Ishwar Devi had promised the Appellant that she would never ask the Appellant to vacate the suit premises. The lease deed dated 14.02.2019 was valid till 25.07.2021 for a period of 3 years on a monthly rent of Rs. 6,529/-. It was further stated in their written statement that they were not informed about the death of Smt. Ishwar Devi. Further, no notice was given under Section 80 of the Civil Procedure Code (CPC). The Appellant had also admitted the receipt of lease termination dated 29.09.2021. It was stated by the Appellant that they had never defaulted in the payment of rent. Further, on 30.09.2021, they had even sent a letter along with a cheque dated 27.09.2021 towards the rent for the month of August and September, 2021. The Appellant also sent another cheque dated 05.10.2021 for a sum of Rs. 6,529/- towards the rent of October, 2021, however, these cheques were returned as the Respondent refused to accept the same.

13. The Respondent filed an application under Order XII Rule VI CPC for passing judgment on admission on the ground that the Appellant admitted the factum of tenancy and of the rental amount. The Appellant subsequently filed their reply to the said application disputing the ownership of the Respondent.

14. Learned Trial Court, based on the admission made by the Appellant in their written statement, granted decree of possession in favour of the Respondent and directed the Appellant to vacate the suit premises within 45 days. The issue of mesne profit is still pending adjudication before the learned Trial Court.

15. Being aggrieved by the impugned judgment, the Appellant has preferred the present appeal.



SUBMISSIONS ON BEHALF OF THE APPELLANT

16. Mr. Abhay Kumar, learned counsel for the Appellant submits that the Respondent had failed to produce the original death certificate of late Smt. Ishwar Devi. He further submits that the alleged relinquishment deed executed by the other legal heirs in favour of the Respondent has not been properly executed. He points out that the Appellant is in possession of the suit property since 1975 and had never defaulted in payment of rent. It is the Respondent who refused to accept the rent tendered by the Appellant.

17. Learned counsel for the Appellant further submits that the learned Trial Court framed the issues in the present matter on 08.09.2022. He submits that there are triable issues raised by the Appellant which require evidence and hence, the learned Trial Court ought not to have decreed the suit under Order XII Rule VI of CPC. With these prayers, learned counsel for the Appellant seeks dismissal of the Impugned Judgment.

LEGAL ANALYSIS

18. This Court has heard the arguments advanced by learned counsel for the Appellant and has perused the documents placed on record and the judgments relied upon.

19. At the outset itself, it is important to examine the relevant law under Order XII Rule VI CPC which deals with judgment on admission. Order XII Rule VI CPC is reproduced hereunder:

“6. Judgment on admissions.- (1) Where admissions 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 thing fit, having regard to such admissions.”



20. For passing a judgment/decreed sought on admission in the facts of the present matter, the Appellant should have made admissions on three essential aspects i.e. :-

- i) There is relationship of landlord and tenant between the parties.*
- (ii) The rate of rent of the suit property is above Rs. 3,500/- per month and The Delhi Rent Control Act, 1958 should not be applicable to the suit property; and*
- iii) Tenancy was terminated.*

21. This Hon'ble court in the matter of ***Delhi Jal Board v. Surrender P. Malik*** reported as 2003 SCC OnLine Del 292 has explained the object of filing an Application under Order XII Rule VI CPC.

*“8. The provision confers almost sweeping powers on the Court to render a speedy judgment in the suit to save the parties from going through the rigmarole of a protracted trial. The only pre-requisite for this is that there must be admissions of fact arising in the suit, be that in the pleadings or otherwise or orally or in writing. Such admission of facts must be clear and unequivocal, unconditional and unambiguous and may relate to the whole claim or a part of it. These need not be made specifically or expressly and could be a constructive admission also. Whether or not such admission arose in the suit would depend on the facts and circumstances of the case. If it involved disputed facts, claims and counter claims requiring evidence of parties for determination of issues or where the defence of a party touched the root of the matter, a judgment could not be passed under Order, 12 Rule 6 dispensing with the trial because the valuable right of going to trial could not be taken away from the party unless the claim was admitted. A duty was, therefore, cast on the court to ascertain the admission of facts and to render judgment on these either in respect of the whole claim or part of it. The court could do so on its own or on the application of a party and without waiting for the determination of any other question between the parties. It could do so at any stage of the suit. Dealing with the scope of provision. Supreme Court said in *Uttam Singh Duggal v. Union*, (2000) 7 SCC 120 : AIR 2000 SC 2740:—*

“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 a 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.”

22. This Hon’ble Court in the matter of ***Rajpal Singh v. Deen Dayal Kapil*** reported as **2014 SCC OnLine Del 337**, wherein it was held that two things are required to be established by Plaintiff-landlord. *Firstly*, the existence of the jural relationship of landlord and tenant between the parties and *Secondly*, 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.

“...6. 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 XII Rule 6 of the Code of Civil Procedure,...”

23. Further, this Hon’ble Court in the recent judgment of ***Rajan Bhandari and Anr. v. Shriniwas Verma***, reported as **2021 SCC OnLine Del 3406**, while upholding the views of the learned Trial Court held that, since there is a clear and unambiguous admission on the part of the Petitioners with respect to the relationship of tenant and landlord in the written statement, Decree of Possession under Order XII Rule VI CPC, in respect of Suit Property should be passed.

24. A bare perusal of Order XII Rule VI CPC reproduced hereinabove makes it amply clear that the emphasis is on admission of relevant facts.



If the relevant facts have been admitted, the mere fact that the Defendant has tried to put their own interpretation to those facts with a view to defeat the claim of the Plaintiff, would not be a sufficient ground to decline/grant relief under Order XII Rule VI CPC. This provision can be invoked only in case of a clear and unambiguous admission by the Defendant in favour of the Plaintiff. For the said purpose, the entire defence of the Defendant is to be taken and read as a whole and cannot be read in isolation. Based on these legal principles, this Court has examined the record of the present case. There is a clear admission that the Appellant was a tenant of late Smt. Ishwar Devi and execution of the lease deed is also admitted. The rate of rent is also admitted i.e., Rs. 6,529/- per month. The Appellant also admits receipt of termination notice of the lease. Even otherwise also, filing of the suit for eviction itself can be treated as notice. The only dispute raised by the Appellant is regarding whether the Respondent was rightful owner of the property or not. Learned Trial Court has dealt with this issue in detail. The relevant portion thereof is reproduced as follows:-

“It is pleaded by the defendant that no proof has been filed by the plaintiff that they are L.Rs of said Smt. Ishwar Devi. However, the plaintiff has already filed on record the registered Relinquishment Deed in his favour thereby showing that now she has become sole and exclusive owner of the suit property. It is settled law that in view of section 116 of Indian Evidence Act, the tenant is not permitted to challenge the rights of his landlord in the suit premises. However, in such cases where the defendant raises question that who is the actual landlord/L.R of erstwhile landlord, in such cases subsequent landlord is only required to prove that he/she is successor of the erstwhile landlord. He is only required to prove his rights in the suit property prima facie, as these are not the suits for title. Hence the burden of proof on plaintiff/landlord in such cases is not such as is required in case of title suits. Having filed registered Relinquishment Deed on record, that burden has already been discharged by the plaintiff.”



25. This Court is in consonance with the observations of the learned Trial Court. Hence, considering overall facts and circumstances, it is evident that there is clear and unambiguous admission on part of the Appellant regarding the tenancy and the rate of rent. Learned Trial Court has rightly granted decree of possession in favour of the Respondent based on the clear and unambiguous admission made by the Appellant.

26. In view of the same, this Court is not inclined to interfere with the impugned judgment. Accordingly, the appeal alongwith all the pending applications are dismissed. No order as to costs.

GAURANG KANTH, J

JUNE 01, 2023

PS/SD