

AD-23
Ct No.16
14.11.2024
(SSS)

FAT 7 of 2024
With
I.A. No. CAN 1 of 2024

Sri Rajiv Ghosh
Vs.
Sri Satya Narayan Jaiswal

Mr. Tapas Bhattacharjee,
Mr. Shibendra Nath Chattopadhyay,
Mr. Abhirup Bhattacharjee,
Mr. Soumik Mukherjee, Advs.

.....For the Appellant.

Mr. Ashim Kumar Roy,
Mr. Anirban Roy, Advs.

.....For the Respondent.

1. The present appeal has been preferred by the defendant in an eviction suit.
2. In the impugned judgment, the learned Trial Judge granted eviction by proceeding on the premise that in view of the pleadings in the written statement of the defendant/appellant, the defendant comes within the purview of Section 2(g) of the West Bengal Premises Tenancy Act, 1997 and as such, after the lapse of the moratorium period of five years subsequent to the demise of his father, the original tenant, the

status of the defendant was relegated to that of a mere trespasser.

3. Accordingly, a judgment on admission was passed.
4. Learned Counsel appearing for the appellant contends that the purported admission, to qualify as an “admission” for Order XII Rule 6 of the Code of Civil Procedure to be attracted, ought to be unambiguous and unqualified.
5. In support of such proposition, learned Counsel cites *Vikrant Kapila and Anr. Vs. Pankaja Panda and Ors.* reported at 2024 (2) ICC 364 (S.C.).
6. It is argued that in the written statement, the defendant categorically stated that the plaintiff/landlord was into an ongoing talk of grant of a fresh tenancy in favour of the defendant. In fact, even after the demise of the original tenant, the father of the defendant, the landlord/plaintiff continued to accept rent from the defendant for a further period, which according to the defendant/appellant indicates the intention of the plaintiff to create a new tenancy by treating the defendant as a tenant.
7. It is thus argued that without granting an opportunity to the defendant to lead evidence on the above aspects of the defence case, the learned Trial Judge erred in law in passing a judgment on

admission outright, which was premature and precluded the defence case from being corroborated by cogent evidence.

8. Learned Counsel for the plaintiff/respondent controverts such argument and points out that the learned Trial Judge looked into the defence case and as per the pleadings of the written statement, the judgment on admission was justified.
9. Upon hearing learned Counsel for the parties and considering the materials of the case, we are at one with the learned Trial Judge for the following reasons:
10. As held by the Supreme Court in the cited judgment of *Vikrant Kapila (supra)*, there cannot be any quarrel with the proposition that in order for a court to pass a judgment on admission under Order XII Rule 6 of the Code of Civil Procedure, the admission in question is required to be unqualified.
11. In the facts of the instant case, we find from the statements made in the written statement that certain ingredients were categorically admitted by the defendant in the written statement. The demise of the original tenant admittedly took place on July 13, 2016. It is further admitted by the defendant in his written statement that the

landlord/plaintiff took rent from the defendant till the month of May, 2021 i.e. roughly up to 5 years after the expiry of the moratorium period from the demise of the original tenant as stipulated in Section 2(g) of the 1997 Act. Those are the only ingredients which are required to be looked into for the purpose of satisfying the requirement of Section 2(g) of the 1997 Act. The said provision is quoted hereinbelow:-

“2. Definitions.- *In this Act, unless there is anything repugnant in the subject or context,-*

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(g) “tenant” means any person by whom or on whose account or behalf the rent of any premises is or, but for a special contract, would be payable, and includes any person continuing in possession after termination of his tenancy and, in the event of death of any tenant, also includes, for a period not exceeding five years from the date of death of such tenant or from the date of coming into force of this Act, whichever is later, his spouse, son, daughter, parent and the widow of his predeceased son, who were ordinarily living with the tenant up to the date of death of the tenant as the members of his family and were dependent on him and who do not own or occupy any residential premises, and in

respect of premises let out for non-residential purpose his spouse, son, daughter and parent who were ordinarily living with the tenant up to the date of his death as members of his family, and were dependant on him or a person authorised by the tenant who is in possession of such premises but shall not include any person against whom any decree or order for eviction has been made by a Court of competent jurisdiction:

Provided that the time-limit of five years shall not apply to the spouse of the tenant who was ordinarily living with the tenant up to his death as a member of his family and was dependant on him and who does not own or occupy any residential premises:

Provided further that the son, daughter, parent or the widow of the predeceased son of the tenant who was ordinarily residing with the tenant in the said premises up to the date of death of the tenant as a member of his family and was dependant on him and who does not own or occupy any residential premises, shall have a right of preference for tenancy in a fresh agreement in respect of such premises on condition of payment of fair rent. This proviso shall apply mutatis mutandis to premises let out for non-residential purpose.”

12. According to the said clause, the dependent heir of the original tenant, unless she is the widow of the original tenant, is entitled to carry on as a tenant [coming within the definition of “tenant” as defined in Section 2(g)] to continue in such capacity for a period of 5 years from the demise of the original tenant.
13. Hence, although the defendant has not pleaded in the written statement that he was a dependent of the original tenant, which should have further cut short his period of tenancy, even proceeding on the premise that the defendant was a dependent, he, being the son of the original tenant, would be entitled to sustain his tenancy in such capacity only up to the expiry of a period of 5 years from the demise of the original tenant.
14. From the pleadings in the written statement, it is evident that the said period was already over at the time of institution of the suit, since the original tenant, his father Ranjan Ghosh, met his demise on July 13, 2016.
15. It is further admitted in the written statement that the landlord/plaintiff, quite rightly, stopped accepting rent from the defendant after May, 2021 i.e. after the expiry of the said period of five years from the death of the original landlord.

16. Hence, the pleadings in the written statement comprise of sufficient ingredients to bring the defendant within the fold of Section 2(g) of the 1997 Act.

17. It may be clarified here that it is well-settled that law or legal arguments need not be pleaded in the pleadings, either by way of a plaint or a written statement.

18. As such, the defendant need not have specifically pleaded the applicability of Section 2(g) of the 1997 Act for the purpose of the pleading to acquire the character of an admission for the purpose of Order XII Rule 6 of the Code. It would suffice, as in the present case, if the necessary factual ingredients to satisfy Section 2(g) are pleaded in the written statement, for it to be deemed to be an admission that the defendant comes within the purview of Section 2(g).

19. That is precisely the case here.

20. In the event the defendant comes within Section 2(g) of the 1997 Act, nothing remains to be adjudicated further in the suit, since the defendant is automatically relegated to the status of a trespasser and the plaintiff immediately becomes entitled to get a decree for eviction in the absence of any further or independent right having been claimed by the defendant.

21. The defendant, in the written statement, claims entirely through his father, the original tenant. The pleading as to there being a talk of a fresh tenancy being granted in favour of the defendant is neither here nor there, since even the said pleading does not tantamount to establish that a new tenancy has already been created in favour of the defendant, in which case, the outcome of the litigation might have been otherwise.
22. As such, the learned Trial Judge was fully justified in resorting to Section 2(g) of the 1997 Act, read with Order XII Rule 6 of the Code of Civil Procedure, to come to the finding that the plaintiff automatically gets entitled to a decree for eviction by way of a judgment on admission.
23. In such view of the matter, we do not find any justification to interfere with the impugned judgment and decree.
24. Accordingly, FAT 7 of 2024 is dismissed on contest, thereby affirming the judgment and decree dated December 2, 2023 passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta, District – Calcutta in Title Suit No. 1068 of 2021.
25. There will be no order as to costs.
26. Keeping in view the pendency of the appeal till now, the defendant/appellant is granted a further

period of three months to vacate the premises in favour of the plaintiff/respondent. The pending execution case shall remain stayed for such period.

27. In the event the defendant/appellant does not vacate the premises within the said period of three months from this date, the plaintiff/deGREE holder will be at liberty to proceed with the execution case and the same will be expedited by the executing court.

28. Interim order, if any, stands vacated.

29. A formal decree be drawn up accordingly.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)