

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

APOT/290/2023
WITH
CS/95/2019
IA NO: GA/1/2023

SADHANA MEHRA
VS
ARVIND KUMAR JAYASWAL

BEFORE:
The Hon'ble JUSTICE SOUMEN SEN
AND
The Hon'ble JUSTICE BISWAROOP CHOWDHURY
Date : 3rd December, 2024.

Appearance:
Ms. Somali Mukhopadhyay, Adv.
...for the appellant

Mr. Debmalya Ghosal, Adv.
Mr. Dilip Kumar Ghosh, Adv.
...for the respondent

The Court: The delay of 19 days has been sufficiently explained. The prayer for condonation of delay is allowed.

The appeal shall be registered if it is otherwise in form.

We have heard the learned counsel for the parties.

The plaintiff has filed an application for judgment and decree on admission. The plaintiff claims to be the owner of the property. Curiously, it appears that the rent was paid to one Mukesh Sood since 2007 and the tenancy agreement is between Mukesh Sood and the defendant. The plaintiff proceeds on the basis that there is an admission in paragraph 5(a) of the

written statement in which the defendant has admitted that in terms of the arrangement between the parties, meaning thereby Mukesh Sood and the present defendant, the defendant continued to tender rent for a sum of Rs.9000/- per month to Mukesh Sood and in consequence thereof, rent receipts were issued in favour of the defendant. The plaintiff alleged that the property was purchased by the plaintiff in the year 2008. However, on what capacity Mukesh Sood was receiving rent is not clear. There is no letter of attornment either. Mukesh Sood has never claimed to be an agent appointed by the plaintiff for the purpose of collecting rent. Mukesh Sood continued to accept rent as landlord. In fact he is the owner of the property and continued to receive rent till 2017. It was alleged by the defendant that an arrangement has been entered into between Mukesh Sood and the present defendant by which the defendant is supposed to maintain the property and discharge all statutory liabilities instead of payment of any fixed sum towards rent. The defendant has disclosed some documents in this regard in the affidavit.

The learned Single Judge in the aforesaid background declined to pass any decree in favour of the plaintiff. It is well settled that a portion of the pleading cannot be extracted for the purpose of judgment upon admission. The entire written statement has to be read as a whole. The defendant has denied the receipt of the notice dated 13th October, 2018 issued by the plaintiff under Section 106 of the Transfer of Property Act.

On such consideration, we do not find any reason to interfere with the order passed by the learned Single Judge.

The appeal fails. However, there shall be no order as to costs.

The connected application stands disposed of.

(SOUMEN SEN, J.)

(BISWAROOP CHOWDHURY, J.)