



2024:DHC:9507



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

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Judgment reserved on: 05.12.2024
Judgment pronounced on: 10.12.2024

+ **RFA 785/2024 & CM APPL. 66532/2024 (stay)****MOHD. IRFAN****.....Appellant**

Through: Mr. Mukesh Kumar and Ms. Nazia
Khanam, Advocate.

versus

**HASAN MIAN SINCE DECEASED THROUGH HIS LEGAL
HEIRS & ANR**

.....Respondents

Through: None.

CORAM:**HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T****GIRISH KATHPALIA, J.:**

1. The appellant tenant has assailed the judgment and decree dated 09.08.2024 passed by the learned Additional District Judge, North-East Karkardooma Courts, Delhi, whereby suit filed by the present respondents was partly decreed under Order XII Rule 6 CPC for recovery of possession of the tenanted property in favour of the present respondents. Having heard the learned counsel for appellant and having examined the record, I do not find it a fit case to even issue notice of appeal.

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2. Succinctly stated, circumstances leading to the present appeal are as follows.

2.1 Sh. Hasan Mian, the now deceased predecessor of the present respondents no.1 (a-f) (*also numbered as respondents no.1-6 in the memo of parties*) and the present respondent no.2 (*also numbered as respondent no.7 in the memo of parties*), being joint owners of the property filed a suit against the present appellant for recovery of possession of one hall having one store, one latrine and bathroom measuring 150 sq. yards (*hereinafter referred to as "the subject property"*) forming part of the larger property bearing no.C216, Gali No.7, Main Road Brahampuri, Delhi. The respondents in their plaint pleaded that they inducted the appellant in the subject property as a tenant by way of rent agreement dated 24.02.2016 for a period of three years at the monthly rent of Rs. 35,000/- for first year, Rs. 36,750/- for the next year and Rs. 38,588/- for the third year; that at the inception of tenancy, the appellant had paid them a sum of Rs. 1,00,000/- towards interest free refundable security deposit; that the appellant started running a gymnasium under the name and style M/s. Target Fitness Club from the subject property; that gradually, the appellant started defaulting in payment of rent and completely stopped paying rent with effect from February, 2018; that the appellant also stopped paying the electricity consumption charges with effect from June 2017; that on being demanded the outstanding amount, the appellant started threatening the respondents, as such the latter got issued legal notice dated 08.02.2019 to the appellant, thereby terminating the tenancy with effect from 28.02.2019; that since the



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appellant opted to ignore the said legal notice, the respondents are entitled to recovery of possession of the subject property as well as the monetary reliefs towards arrears of rent and mesne profits.

2.2 The appellant filed written statement before the trial court, pleading that he was inducted as a tenant for commercial purposes in the subject property, which was in a rough condition and he had to incur expenses of Rs. 8,00,000/- on its renovation, so the rent fixed was Rs. 10,000/- per month, in addition to which he paid a sum of Rs. 5,00,000/- in cash to the now deceased respondent no.1; that under the pretext of preparing a rent agreement, the now deceased respondent no.1 obtained his signatures and thumb impressions on blank papers; that he continued to pay the electricity dues; that the now deceased respondent no.1 asked him to pay additional refundable security of Rs. 3,00,000/- for extending the tenancy for another period of three years, so he paid Rs. 84,110/- to respondent no.1 in cash on 01.10.2018 towards electricity dues and a further sum of Rs.3,00,000/- on 15.10.2018 towards additional security; that under these circumstances, the tenancy was extended for another period of three years on same rent; that the respondents got the electricity supply to the subject property disconnected; that when he requested for six months to vacate with offer to the respondent no.1 to retain the security of Rs. 8,00,000/- to resolve the electricity dues, son in law of respondent no.1 started threatening him, regarding which he lodged a police complaint; that on payment of the additional security amount, his tenancy got extended, so he is not liable to vacate the subject property; that he filed a suit against the respondents for permanent



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injunction to restrain them from forcibly evicting him from the subject property and in that suit along with the written statement, the present respondents filed copy of legal notice of termination of tenancy; that it is only after receipt of copy of written statement in the other suit that he came to know about the quit notice, otherwise the notice was never delivered to him.

2.3 In view of pleadings in the written statement, the respondents filed application under Order XII Rule 6 CPC seeking partial decree of the suit for recovery of possession of the subject property on the ground that the appellant in his written statement had made unambiguous admissions. The respondents pleaded in the said application that in his written statement, the appellant had unambiguously admitted himself to be the tenant in the subject property by way of rent agreement dated 24.02.2016 for a period of three years; that the rate of rent was claimed by the appellant to be Rs. 10,000/- per month; and that the tenancy was terminated by way of quit notice dated 08.02.2019 as well as expiry thereof with efflux of time, therefore, they are entitled to the preliminary decree of recovery of possession of the subject property under Order XII Rule 6 CPC.

2.4 In his reply to the application, the appellant reiterated the contents of his written statement and reaffirmed that he never denied being a tenant in the subject property under the respondents, but further pleaded that the quit notice was void because it was issued on the ground of non payment of electricity dues whereas those dues of Rs. 84,110/- had already been paid by

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him to respondent no.1, but those dues were not paid further by the respondents to the electricity supply authority; that the respondents were not competent to terminate the tenancy, because the tenancy had been orally extended for three years on same rent subject to payment of additional security amount of Rs. 3,00,000/- which was paid by him; and that without refunding the said amount of Rs. 8,00,000/-, he cannot be evicted from the subject property.

2.5 After hearing both sides, the learned trial court allowed the application under Order XII Rule 6 CPC by way of the impugned judgment and preliminary decree for recovery of possession of the subject property in favour of the present respondents.

3. Hence, the present appeal.

4. During arguments, learned counsel for appellant contended that since the appellant had spent substantial money on renovation of the subject property in order to make it suitable for running gymnasium, the suit has to be taken through full dress trial and preliminary decree under Order XII Rule 6 CPC is not sustainable. Learned counsel for appellant also contended that since the tenancy was extended orally after the appellant paid additional security amount, there was no termination of tenancy and therefore, preliminary decree under Order XII Rule 6 CPC is not sustainable. Learned counsel placed reliance on the judgments in the cases titled ***Jeevan Diesels***



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such order or judgment as the court may think just. The Law Commission of India in its 54th report suggested an amendment in the said provision in order to enable the court deliver a judgment not only on the application of a party but on its own motion as well. Accordingly, the provision was amended in order to further the ends of justice and to widen the scope of the provision by empowering the judges to use it *ex debito justitiae* (an obligation of justice). Reading the provision under Order XII Rule 6 CPC as it stands, in an appropriate case, a party to the *lis* on the basis of admissions of the rival party can press for judgment as a matter of legal right. However, the court always retains discretion in the matter of pronouncing the judgment. The expressions “admission of fact” and “either in the pleading or otherwise, whether orally or in writing” used in Order XII Rule 6 CPC show the wide expanse of the provision to the extent that the admissions in question can be inferred from facts and circumstances of the case also.

5.2 A Division Bench of this court in the case of ***Bhartia Industries Ltd. vs Rajiv Saluja***, 112 (2004) DLT 82 DB, upheld the judgment of the learned Single Judge, whereby the suit was decreed under Order XII Rule 6 CPC in view of admission of facts in regard to the relationship of landlord and tenant, termination of tenancy by efflux of time or in any case by way of quit notice which was duly served on defendant.

5.3 In the case of ***National Radio and Electronic Company Ltd. vs Motion Picture Association***, 122 (2005) DLT 629 DB, a Division Bench of this court upheld the decree passed by the trial court under Order XII Rule 6





is wider in as much as the provision of order 12 Rule 1 is limited to admission by 'pleading or otherwise in writing' but in Order 12 Rule 6 the expression 'or otherwise' is much wider in view of the words used therein namely: 'admission of fact.....either in the pleading or otherwise, whether orally or in writing'.

50. Keeping the width of this provision in mind this Court held that under this rule admissions can be inferred from facts and circumstances of the case [See Charanjit Lal Mehra and others v. Kamal Saroj Mahajan (Smt.) and another, (2005) 11 SCC 279 at page 285 (para 8)]. Admissions in answer to interrogatories are also covered under this Rule [See Mulla's commentary on the Code, 16th Edition, Volume II, page 2177].

51. In the case of Uttam Singh Duggal & Co. Ltd., v. United Bank of India and others, (2000) 7 SCC 120, this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment”.

5.5 In the case of *National Textile Corporation vs Ashval Vadera*, 167(2010) DLT 602, this court reiterated thus:

“17. It is settled law that admissions need not be made expressly in the pleadings. Even on the constructive admissions Court can proceed to pass a decree in plaintiff's favour. In order to invoke the provisions of Order XII Rule 6 CPC, admissions de hors pleadings may also be considered as is evident from the use of the word "otherwise" in the said provision. [See Shikharchand vs. Mst. Bari Bai, AIR 1974 MP 75; K. Kishore vs. Allahabad Bank, 1997 (41) DRJ 698; Uttam Singh Dugal vs. UBI, (2000) 7 SCC 120; Rajiv Srivastava vs. Sanjiv Tuli, 119 (2005) DLT 202; Rama Ghei vs. U.P. State Handloom Corpn., 91 (2001) DLT 386 and R.N. Sachdeva vs. R.L. Mahajan Charitable Trust, 1997 (41) DRJ 698]. Such admissions may be contained in documents written or executed between the parties before the action is brought or even from the statements of parties recorded in the Court, including statements recorded under Order X Rule 1 CPC. Admissions may also be gleaned from vague and unspecific denials made in the pleadings and documents, which on the face of it appear to have been deliberately made in order to mislead the Court, or



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with their written statement filed a copy of the quit notice and it is only then that he came to know about issuance of the said notice. That being so, what has to be examined is as to whether the tenancy was lawfully terminated by way of quit notice and/or it expired with efflux of time. At the same time, it also needs to be examined as to whether such requirement is at all necessary in the light of the legal position.

7.1 In the case of *Satya Narayan Spun Pipe Factory vs N. Padmavati*, 2003 (3) RCR (Civil) 388, the Andhra Pradesh High Court relying upon judgment of Hon'ble Supreme Court of India in the case of *Datto Pant vs Vithal Rao*, AIR 1975 SC 1111, held that when tenancy is determined with efflux of time, no quit notice is necessary.

7.2 In the case of *Skyland International Private Limited vs. Kavita P. Lalwani*, RFA 697/2010 decided by coordinate bench of this court, legal position as regards writing a judgment on admissions was discussed at length, holding *inter alia* that as held in the case of *Nopany Investments Private Limited vs. Santokh Singh (HUF)*, 2008 (2) SCC 728 filing of the suit in itself is a notice to quit on the tenant, therefore no notice to quit under Section 106 of the Transfer of Property Act is necessary to enable the landlord to get the decree of possession.

7.3 In the case of *K.M. Manjunath vs. Erappa G. Dead through LRs*, 2022 SCC OnLine SC 2316, the Supreme Court approved the decision of the High Court whereby relying upon a Division Bench decision of the



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notice under Section 106 of the Transfer of Property Act, 1882. Mere existence of Clause 6 would not automatically mean that there is an automatic creation of a registered lease deed for regular fresh periods of three years. This argument of the appellant is therefore rejected.”

(emphasis supplied)

7.5 In the case of **Shri Sourabh Agarwal vs. Sh. Megh Raj Mansharamani**, 2014 SCC OnLine Del 129, this court observed thus:

“2. In Delhi, in order to maintain the suit for possession in a civil court against the tenant, it is necessary that the following facts must exist :

(i) There is a relationship of landlord and tenant between the parties;

(ii) The rate of rent of the premises is more than Rs. 3,500/- per month; and

(iii) The tenancy of the tenant has either expired by efflux of time or stands duly terminated by a notice under Section 106 of the Transfer of Property Act, 1882.

3. In the present case, there is no dispute as to the relationship of the landlord and tenant between the parties and also that the rate of rent of the premises is more than Rs. 3,500/- per month. Both these admissions are specifically contained in paragraph 2 of the reply on merits and para 12 of the preliminary objections of the written-statement of the appellant-defendant. In fact, these aspects are also not disputed before me and dispute is only raised with respect to lack of termination of tenancy, and that once there is a disputed question of fact with respect to termination of tenancy, the suit it is argued could not have been decreed under Order 12 Rule 6 CPC. In support of this argument on behalf of the appellant, reliance is placed upon the judgment of the Supreme Court in the case of Jeevan Diesels and Electricals Limited v. Jasbir Singh Chadha (HUF) (2010) 6 SCC 601 which holds that admissions must be clear and unambiguous before the same are relied upon for the purpose of Order 12 Rule 6 CPC.

*4. The argument urged on behalf of the appellant is misconceived and now the legal position so far as this Court is concerned, is as per the judgment of this Court in the case of the same name being Jeevan Diesels and Electricals Limited v. Jasbir Singh Chadha (HUF) (2011) 183 DLT 712 and which judgment holds that **after the amendment of Section 106 of the Transfer of Property Act, 1882 by the legislature to do away***



with the technical defences of service of notice, even service of summons in the suit can be treated as a notice under Section 106 of the Transfer of Property Act, 1882. This judgment also holds that alongwith suit documents are filed which will include the legal notice terminating tenancy and again therefore on receipt of such documents including the legal notice terminating tenancy there is termination of tenancy.....

However, it has been held in various judicial pronouncements that the service of summons in the suit will be taken as the receipt of notice of the dissolution of the partnership or severing of the joint status in case of non service of appropriate notices and therefore the suits for dissolution of partnership and partition of HUF property cannot be dismissed on the technical ground that the partnership was not dissolved before filing of the suit or the joint status was not severed before filing a suit for partition of the HUF property by serving of appropriate notices. In my opinion, similar logic can be applied in suits for possession filed by landlords against the tenants where the tenancy is a monthly tenancy and which tenancy can be terminated by means of a notice under Section 106 of the Transfer of Property Act. Once we take the service of plaint in the suit to the appellant/defendant as a notice terminating tenancy, the provision of Order 7 Rule 7 CPC can then be applied to take notice of subsequent facts and hold that the tenancy will stand terminated after 15 days of receipt of service of summons and the suit plaint. This rationale ought to apply because after all the only object of giving a notice under Section 106 is to give 15 days to the tenant to make alternative arrangements. In my opinion, therefore, the argument that the tenancy has not been validly terminated, and the suit could not have been filed, fails for this reason also.....

5. The legal position enunciated in the case of Jeevan Diesels and Electricals Limited (supra) has thereafter been consistently followed in hundreds of other cases decided by the Courts in Delhi. The judgment in the case of Jeevan Diesels and Electricals Limited (supra) has also been followed in various other judgments even of this Court. Therefore, in my opinion, there is no disputed question of fact with respect to termination of tenancy which requires trial and thus the ratio of the Supreme Court judgment relied upon by the appellant will not apply in the facts of the present case."

(emphasis supplied)



7.6 In the case of *Chittraroopa Palit vs. Global Health Pvt. Ltd. & Anr.*, 2013 SCC OnLine Del 3024, this court recapitulated the legal position thus:

“17. The Supreme Court in the case of Nopany Investments (P) Ltd. v. Santokh Singh (HUF), (2008) 2 SCC 728 held that the filing of the eviction suit under general law itself was notice to quit upon the respondents and thus even as per the alleged claim of the respondent No. 2 of a separate tenancy, the same being a month to month tenancy, the same stood terminated on the filing of the suit and service of summons, plaint and documents thereof upon him.

18. As rightly held by esteemed brother J.R. Midha, J. in the case of Sky Land International Pvt. Ltd. v. Kavita P. Lalwani, 191 (2012) DLT 594 wherein the court has dealt with similar aspect of issue in great details in para 26.7 to 26.12 and 26.17 which read as under:

“26.7 The pleadings are the foundation of litigation and must set-forth sufficient factual details. Experience has shown that all kinds of pleadings are introduced and even false and fabricated documents are filed in civil cases because there is an inherent profit in continuation of possession. In a suit for ejectment, it is necessary for the defendant to plead specifically as to the basis on which he is claiming a right to continue in possession. A defendant has to show a subsisting right to continue as a lessee. No issue arises on vague pleadings. A vague denial of the receipt of a notice to quit is not sufficient to raise an issue. To rebut the presumption of service of a notice to quit, the defendant has to plead material particulars in the written statement such as where after receiving the plaint and the documents, the defendant has checked-up with the Post-Office and has obtained a certificate that the postal receipt filed by the plaintiff was forged and was not issued by the concerned Post Office.

26.8 A self-serving denial by the defendant and more so in these types of cases, cannot hold back the Court from exercising its jurisdiction to decree a suit under Order XII Rule 6 of the Code of Civil Procedure. Raising a plea of non-receipt of notice to quit and seeking an issue on it is obviously to drag on the litigation and keep on holding to the suit property without having to pay the current market



rentals, is not sufficient to raise an issue and, therefore, liable to be rejected.

26.9 If such a plea of denial of notice is treated as sufficient to non-suit the plaintiff, the plaintiff will have serve a fresh notice to quit and then bring a fresh suit where again the defendant would deny the receipt of notice to seek an issue and trial. The process would go on repeating itself with another notice, in fact, repeat ad-infinitum and in this manner, the defendant will be able to effectively stay indefinitely till the plaintiff settles with him for a price. The Court cannot remain a silent spectator and allow the abuse of process of law. The eyes of the Courts are wide enough to see the truth and do justice so that the faith of the people in the institution of Courts is not lost.

26.10 In view the amendment brought about to Section 106 of the Transfer of Property Act by Act 3 of 2003, no objection with regard to termination of tenancy is permitted on the ground that the legal notice did not validly terminate the tenancy by a notice ending with the expiry of the tenancy month, as long as a period of 15 days was otherwise given to the tenant to vacate the property. The intention of Legislature is therefore clear that technical objections should not be permitted to defeat the decree for possession of tenanted premises once the tenant has a period of 15 days for vacating the tenanted premises.

26.11 Therefore, even if the notice of termination is held to be invalid, service of summons of the suit for possession can be taken as notice under Section 106 of the Transfer of Property Act read with Order VII Rule 7 of the Code of Civil Procedure but in that event the landlord would be entitled to mesne profits after the expiry of 15 days from the date of the receipt of summons and not from the date of notice of termination.

26.12 The purpose of Order XII Rule 6 CPC is to give the plaintiff a right to speedy judgment. The thrust of amendment of Order XII Rule 6 is that in an appropriate case a party on the admission of the other party can press for judgment as a matter of legal right. If a dishonest litigant is permitted to delay the judgment on the ground that he would show during the trial that he had not



received the notice, the very purpose of the amendment would be frustrated.

26.17 In the last 40 years, a new creed of litigants have cropped up who do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the Courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

8. Admittedly, in the present case the initial tenancy between the parties through the rent agreement dated 24.02.2016 expired by efflux of time on 28.02.2019. According to the appellant, tenancy was extended for further period of three years orally. It is no longer *res integra* that an oral tenancy is at the most month to month tenancy. As held in the above quoted judicial pronouncements, the tenancy (*according to both sides*) or even the extended tenancy (*as alleged by the appellant only*) was not by way of a registered instrument and that being so, it was a month to month tenancy, which was terminated on receipt of the copy of quit notice by the appellant along with written statement in the suit filed by him.

9. As mentioned above, though the appellant denied having been served with the quit notice dated 08.02.2019 but admitted that after 28.02.2019, the tenancy was only verbal, which as per law is month to month basis. The appellant further pleaded that about the quit notice dated 08.02.2019 he came to know when he received a copy thereof with written statement of the present respondents in the suit filed by him. So, the quit notice was clearly received by him, though he did not disclose the date of receipt thereof. The



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purpose of issuance of quit notice was only to inform the appellant tenant that he was expected to vacate the subject property and must do alternate arrangement for himself. But most importantly, in terms with the judicial pronouncements quoted above, service of the summons of the present suit out of which the present appeal has arisen was in itself a notice to quit and no separate notice was even required.

10. The irresistible conclusion is that the appellant admitted having been inducted as a tenant in the subject property by the respondents at a monthly rent much above the protection ceiling stipulated under the rent control legislation and the month to month tenancy was duly terminated. That being so, the learned trial court was completely justified in writing judgment *qua* recovery of possession of the subject property on admissions, leaving the issue of rival monetary claims to be put on tracks of full dress trial. I am unable to find any infirmity in the impugned judgment and decree, so the same are upheld. The appeal and the accompanying application are dismissed.

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(JUDGE)

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