



2024:DHC:8993



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

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Date of Decision: 20.11.2024+ **RFA 798/2024, CM APPL. 67544/2024 & 67543/2024 and CM APPL. 67546/2024**

SUKHVINDER KUMAR BHARDWAJ

.....Appellant

Through: Mr. Arjun Kumar, Advocate

versus

SMT VINITA

.....Respondent

Through: None.

CORAM: JUSTICE GIRISH KATHPALIA**JUDGMENT (ORAL)**

1. The appellant tenant has assailed order dated 03.08.2024 of the learned Trial Court whereby, after dismissing the application of the appellant under Order VII Rule 11 CPC, the learned Trial Court invoked *suo motu* powers under Order XII Rule 6 CPC and passed preliminary decree of restoration of possession of the subject property in favour of the present respondent landlord and after framing issues related to recovery of arrears of rent and mesne profits, posted the matter for trial. Having heard learned counsel for appellant and having perused the record, in my considered view it is not a fit case to even issue notice of the appeal to the respondent/landlord.

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2. Briefly stated, circumstances relevant for present purposes are as follows. The present respondent being sole and absolute owner of the subject property, which is a ground floor DDA MIG Flat bearing no. AG-1/20A, Vikas Puri, New Delhi, agreed to induct the appellant as a tenant in the subject property for residential purposes at a monthly rent of Rs. 20,000/-. A rent agreement dated 20.01.2021 was executed between the parties and after expiry of the same with efflux of time, another rent agreement dated 22.03.2022 was executed, stipulating the monthly rent at a rate of Rs. 21,000/-, after expiry whereof with efflux of time, another rent agreement dated 16.11.2022 stipulating the monthly rent at a rate of Rs. 22,000/- was executed between the parties. After expiry of the said rent agreement with efflux of time, the appellant did not vacate the subject property and the respondent landlord came to know that the appellant was using the subject property for commercial purposes. As such, the respondent issued a quit notice, which was duly served on the appellant. As the notice was ignored, the present respondent filed suit against the appellant for recovery of possession of the subject property and recovery of arrears of rent and mesne profits. In the Written Statement, the appellant admitted the relationship of tenancy between the parties, the rate of rent being above the statutory protection and the service of quit notice. But the appellant resisted the suit, pleading that the tenancy was for commercial purposes as parties had orally agreed that the appellant could use the subject property for running his sole proprietorship business of pharmaceutical products for a period of seven years.



3. In the backdrop of above rival pleadings, the learned Trial Court traversing through various judicial precedents flowing from the Supreme Court and this Court found it a fit case to invoke the *suo motu* powers under Order XII Rule 6 CPC and partly decreed the suit to the extent of recovery of possession of the subject property in favour of the present respondent.

4. Hence the present appeal.

5. Learned counsel for appellant contends that it was not a fit case to pass decree for recovery of possession since the learned Trial Court did not have jurisdiction. The challenge to the jurisdiction of the learned Trial Court is raised by learned counsel for appellant on the ground that as reflected from documents on record as well as pleadings of the present respondent, the subject property was being used for commercial purposes; and therefore, it is only the designated Commercial Court, which could hear the suit. In this regard, learned counsel for appellant places reliance on the judgment of a Division Bench of this Court in the case titled ***Jagmohan Behl vs. State Bank of Indore***, 2017:DHC:5761-DB. Learned counsel for appellant also contends that he was not heard by the learned Trial Court before passing the impugned order. According to learned counsel for appellant, the impugned order could not be passed since there was no formal application under Order XII Rule 6 CPC. No other argument has been advanced.

6. To begin with, it is no longer *res integra* that powers under Order XII Rule 6 CPC can be invoked by the Trial Court even *suo motu* and without



any formal application. In this regard, reference can be drawn from the judicial precedents, namely *Nicholas Piramal India Ltd. vs. B.N. Chadha (deceased) through LRs*, 133 (2006) DLT 573 DB; *Karam Kapahi & Ors. Vs. M/s. Lal Chand Public Charitable Trust & Anr.*, (2010) 4 SCC 753; *Charanjit Lal Mehra & Ors. vs. Smt. Kamal Saroj Mahajan & Anr.*, (2005) 11 SCC 279; and *Saranpal Kaur Anand vs. Praduman Singh Chandhok & Ors.*, (2022) 8 SCC 401. Therefore, I am unable to find any merit in the submission of learned counsel for appellant that the learned Trial Court could not have passed the impugned order in the absence of formal application under Order XII Rule 6 CPC.

7. So far as the contention that learned counsel for the appellant was not heard by the learned Trial Court, in view of specific observations in the impugned order, I am unable to accept this contention. The impugned order was passed by the learned Trial Court in open court in presence of learned counsel for the appellant (*defendant therein*). Even in the impugned order, the learned Trial Court categorically observed having heard both sides. On this aspect, it is further elaborated by learned counsel for appellant that the counsel present before the learned Trial Court was only a proxy counsel. But the fact remains that even on earlier dates, it is the same counsel Ms. Priya/Priyanka who had been appearing on behalf of the appellant before the learned Trial Court. Admittedly, the said counsel is an associate of the learned counsel appearing today for the appellant. Besides, there is nothing in the impugned order to show that Ms. Priya/Priyanka, Advocate made any request for adjournment before the learned Trial Court on the ground that it



is only the other counsel who has to address arguments. Moreover, the said counsel addressed arguments on same lines as have been advanced today.

8. As regards the issue of jurisdiction of the learned Trial Court, none of the rent agreements placed on record stipulate the tenancy to be for commercial purposes. Rather, the subject property in itself is MIG Flat in a residential area and not a commercial property. To reiterate, it is nobody's case that the rent agreements qua the residential property were executed for the purposes of commercial tenancy. So far as the pleadings of the present respondent are concerned, the respondent in her plaint categorically observed that it is subsequently in the month of February, 2023 that she came to know that the appellant had started using the subject property for commercial purposes, so she confronted the appellant qua the said misuser and only thereafter issued a quit notice. The judgment in the case of **Jagmohan Behl** (supra) referred to by the learned counsel for appellant stands on completely distinguishable footing insofar as in the said case, the tenancy was undisputedly a commercial tenancy whereby a bank had been inducted as tenant in the premises concerned, which is not in the present case.

9. There is another aspect. It has to be kept in mind that not every civil suit has to be taken through full dress trial. Where the defendant admits a part of the claim of the plaintiff, the provision under Order XII Rule 6 CPC confers wide powers on the trial court to write judgment on and to the extent of admission. If from rival pleadings and documents, it is clear that there is



no need for a trial as the defendant admits claim of the plaintiff wholly or in part, no purpose would be served by pushing the parties into rigmaroles of civil trial. In the present case, even if the parties were directed to go through a full dress trial, it would not have led to any view other than the one being taken herein. In the backdrop of admitted rent agreements, the appellant would not have been permitted to lead evidence contrary to the terms thereof to the effect that the parties had orally agreed that the appellant could use the subject property for commercial purposes. As held in a plethora of judicial pronouncements, including *Smt. Gangabai w/o Rambilas Gilda vs. Smt. Chhabubai w/o Pukhrajji Gandhi*, (1982) 1 SCC 4, when a party seeks to rely on a document embodying the terms of transaction, nature and intent of the transaction must be gathered from the terms of the document itself and no evidence of any oral agreement or statement can be admitted as between the parties to such documents for the purpose of contradicting or modifying its terms. In the present case, admittedly the rent agreements were not sham documents or not intended to be acted upon. Consequently, on the issue of jurisdiction of the civil court, resistance sought to be raised on behalf of the appellant is not convincing that it is only the Commercial Court which had jurisdiction over the subject matter of the suit.

10. Thence, in view of clear admissions in the Written Statement to the effect that the appellant had been inducted as a tenant in the subject property; that the rate of rent was above statutory protection of the rent control legislation; and that the tenancy stood expired with efflux of time as well as by quit notice, I find no infirmity in the impugned judgment and



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decree passed by the learned Trial Court *suo motu* invoking Order XII Rule 6 CPC. Therefore, the impugned judgment and decree are upheld. The appeal and the pending applications are dismissed.

GIRISH KATHPALIA, J

NOVEMBER 20, 2024/rk/ry

Click here to check corrigendum, if any