

(2010) 10 DEL CK 0182

In the Delhi High Court

Case No : IA No. 9073 of 2010 in CS (OS) 2400 of 2008

Bhupinder Singh

APPELLANT

Vs

Hill Elliott and Co. Ltd.

RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
General Clauses Act, 1897 — Section 27

Citation : (2011) 1 AD 309 : (2010) 120 DRJ 698

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Sanjiv Behl, Rajan Narain, Mohini Narain and Rajiv Dubey, for the Appellant; G.L. Rawal and Kuljeet Rawal, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—This order will dispose of the plaintiff's application under Order XII, Rule 6 of the CPC Code, 1908 (CPC), IA 9073/2010. In this order, the plaintiff will be referred to as such; the first Defendant would be referred to as "Hill Elliott".

2. The suit averments briefly are that the plaintiff is concededly the owner of the property being S-323 Panchsheel Park, New Delhi, let out the ground floor, first floor, garage with servant quarter and lawn attached to the said construction (hereafter referred to as the "suit property") to Hill Elliott through a registered lease deed dated 16.10.1982. The tenure of the lease was to expire on 12.10.1986. It is claimed that since no registered lease deed was executed thereafter, Hill Elliott's status became one of monthly tenant holding over and paying `7,000/- for use and occupation of the premises. The plaintiff did not wish to continue Hill Elliott as his tenant and issued a notice dated 09.08.2008 terminating the arrangement, which automatically ended on 12.09.2008. It is alleged that the notice was sent by various modes such as registered AD post and other modes of service. The plaintiff claims decree for possession and manse

profits at the rate of `4, 00,000/- per month with effect from 13.09.2008. The plaintiff also claims a decree for `8.14 lakhs towards alleged damages/manse profits for the period up to 13.09.2008.

3. Hill Elliott, in its written statement mentions about a previous suit by the plaintiff before the Civil Court being No. 358/1993 (subsequently re-numbered as Suit No. 1195/2008 and hereafter referred as "the plaintiff's previous suit"), where he sought for eviction of another person, from the suit property, i.e. Ashok Jhaharia (hereafter referred to as "AJ"), claiming that he was the tenant of the suit property. It is submitted that the suit was withdrawn unconditionally without obtaining leave. Hill Elliott disputes that the notice for termination of tenancy was ever served upon it.

4. Hill Elliott further, alleges suppression of material facts from the Court and adverts to another suit being No. 12/1993 (re-numbered as Suit No. 476/2006) instituted by AJ, erstwhile Director of Hill Elliott against the plaintiff in respect of the same cause of action. These suppression of facts, according to Hill Elliott disentitles the plaintiff to any relief. Hill Elliott alleges on 16.09.1985 before expiry of the initial period of lease, it was agreed that it would continue with tenancy rights for a further 38 months; its letter dated 16.09.1985 to the plaintiff to this effect is relied upon. Hill Elliott concedes that no registered lease deed was executed after the expiry of the original deed dated 16.10.1982. It is alleged that on the basis of oral discussion the tenancy was, however, extended up to 31.12.1989. Hill Elliott alleges that AJ was the plaintiff's good friend and it was agreed between it (the company) and the plaintiff, that AJ would acquire the tenancy. Hill Elliott relies upon a registered lease deed dated 26.12.1989 between the plaintiff and AJ, by which the latter became the tenant in respect of the suit property. It is alleged that AJ occupied the premises; Hill Elliott submits that he was a relative of one of the Defendant's director and also a member of the common Hindu joint family. Hill Elliott alleges that in these circumstances it cannot be treated as a tenant. It mentions about erroneous admission on its behalf in one of the suits filed before the Civil Court, conceding that it was a tenant, which according to it cannot be relied upon.

5. Hill Elliott submits that the plaintiff had issued rent receipts to AJ and alludes to a letter dated 29.11.1991 written by it to the plaintiff and the latter's reply dated 25.0.1992. It is argued that in these circumstances, the plaintiff is stopped from contending that Hill Elliott is a tenant, and contends that its tenancy terminated on 26.12.1989, the moment AJ became the plaintiff's lessee.

6. In the application for a decree on admission, the plaintiff relies upon the initial lease deed dated 16.10.1982 and the fact that it ended on 12.10.1986. It is contended that Hill Elliott was promoted by Jhaharia brothers and one of them, i.e. AJ, authorized representative of the company approached it and requested for creation of tenancy. It is submitted that pursuant to this understanding, a Registered Lease Deed was executed on 26.12.1989; further, Hill Elliott continued to give the rent and the plaintiff went on accepting it. The plaintiff

argues that in 1992 when AJ did not vacate the premises, the tenancy was put to an end; this led to AJ's suit seeking declaration that he was never a tenant and the Registered Lease Deed dated 12.10.1989 was a sham document, never acted upon by the plaintiff and that Hill Elliott had never surrendered the tenancy of the suit property. The plaintiff submits to having filed the suit for possession against AJ in which only Hill Elliott was impleaded as a party. It is submitted that in those proceedings, i.e. Suit No. 358/1993, Hill Elliott in the written statement categorically asserted that it was a tenant and that the tenancy in its favor was never put to an end. A certified copy of the written statement dated 28.04.1995, verified by one Mr. A.K. Jhaharia, Director of Hill Elliott, has been placed on record by the plaintiff. The relevant part of that written statement by Hill Elliott, relied upon by the plaintiff for a decree on admission reads as follows:

It is submitted that the tenanted premises have been under the tenancy of the Defendant since 16.10.1982. Time and again, the tenancy period is extended and lastly it was extended in the month of December 1986. The property bearing No. S-323, Panchsheel Park, New Delhi is under the tenancy of Defendant No. 2 as such with effect from 16-10-1982. On account of the new understanding/settlement of the plaintiff and Defendant No. 2, the tenanted period was further extended up to 31st December, 1989. The rent payable was Rs. 7000/- (Rupees seven thousand only) per month. At no point of time, prior to 31st December, 1989 neither the tenancy of Defendant No. 2 was terminated nor did Defendant No. 2 surrender the possession of the tenanted premises to the plaintiff. Further, it appears that as the property value in the area is increasing day by day, the greed crept up in between the plaintiff entered into the alleged lease agreement on 26.12.1989 with Defendant No. 1 with the hope that Defendant No. 1 who has been residing along with family members of Shri G.L. Jhaharia Ex-director of the Defendant No. 2 in the tenanted premises might deliver the possession of the tenanted premises to the plaintiff.

It is further submitted that till date the rent is being paid only by Defendant No. 2 to the plaintiff and at no point of time the Defendant No. 1 ever paid any rent to the plaintiff. It is emphatically denied that the defense of the Defendant No. 1 is against his alleged admission. When no reply was given to the alleged telegram of the plaintiff dated 15.12.1989, by the Defendant No. 1, the question of admission on his part does not arise.

7. The plaintiff also relies upon AJ's written statement in that suit to the effect that possession of the suit premises was never handed over to him and that Hill Elliot continued to be in occupation and possession of the suit premises. AJ also asserted that registered lease deed was agreed to have been rescinded/ treated as void. The material portion of that written statement by AJ dated 28.04.1995 and a certified copy of which is on the record reads as follows :

But at no point of time the possession of the said premises was handed over by the plaintiff to the answer Defendant, as the tenant already in occupation i.e. Defendant No. 2, M/s Hill Elliott and Company Ltd., Bombay refused to vacate

the premises. As such, the premises remained in occupation and possession of Defendant No. 2. The answering Defendant is the representative of Defendant No. 2 and it was decided between the plaintiff and the answering Defendant verbally that the said lease agreement dated 26.12.89 shall be treated as null and void ab-initio as the possession of the tenanted premises was never handed over to the answering Defendant and as the lease agreement was never implemented. As such, the answering Defendant has no right, authority of any nature whatsoever to deliver the possession of the tenanted premises to the plaintiff. No right had accrued in his favor by the lease agreement dated 26.12.1989. The answering Defendant has never been in occupation and possession of the premises except he is the permissible user of the portion of it being Delhi representative of Defendant No. 2 and he has no better title than that of a licensee. The premises have always been under the control, occupation and possession of Defendant No. 2 being tenant in it under the plaintiff. It appears that the plaintiff acted wisely and on allurements and assurances got the lease agreement executed from answering Defendant on 26.12.1989 to falsely show that a new tenancy had been created with the answering Defendant so that he could thereafter get the premises vacated from the Defendants. But he could not achieve his mala fide designs as the tenanted premises remained in exclusive possession and occupation of Defendant No. 2, as tenant. As such, when the plaintiff could not achieve his mala fide designs as the tenanted premises remained in exclusive possession and occupation of Defendant No. 2, as tenant. As such, when the plaintiff could not achieve his mala fide design the plaintiff contacted the Defendant No. 2 and to the knowledge of the answering Defendant the plaintiff and Defendant No. 2 mutually agreed to raise the rent of the tenanted premises from Rs. 7,000/- to Rs. 8,000/- per month with effect from 1.1.1990, keeping in view the rise in prices of the properties in the area. As such, the suit of the plaintiff is based on false and concocted facts and it is nothing but abuse of process of law. As such, it be kindly dismissed with heavy costs.

8. The plaintiff submits that he conceded to the suit filed by AJ and admitted that the latter was not a tenant and Hill Elliot continued to be a tenant, after which the suit No. 12/1993 was withdrawn. The plaintiff further submits that in view of the subsequent fact that A.J. withdrew suit, he (the plaintiff) similarly relies upon identical averments by AJ in the suit filed by him, i.e. 12/1993 where he sought a declaration that he was not a tenant. The relevant averments in that regard, in the said suit and a certified copy of which has been filed by the plaintiff, are as follows :

6. That as the plaintiff was/is the representative of M/s Hill Elliott & Co. Ltd, it was decided in between the plaintiff and the Defendant verbally that the said lease deed dated 26.12.1989 shall be treated as null and void as it was never implemented.

7. That the rent thereafter was being paid continuously to the Defendant by M/s

Hill Elliott & Co. Ltd., Bombay at the rate of Rs. 8,000/- (Rupees eight thousand) per month. The electricity and water charges were separately paid by the said company.

8. That the plaintiff was shocked to receive a telegram n 16.12.1992, wherein, the plaintiff was asked to vacate the tenanted premises, while in fact the plaintiff has never been in occupation and possession of the tenanted premises being tenant of the Defendant. The plaintiff and family of the other Directors of M/s Hill Elliott & Co. Ltd. are in occupation of premises as authorized representative/ Director of /s Hill Elliott & Co. Ltd. and at no point of time the said lease deed dated 26.12.1989 was implemented or came in force, nor any possession was taken by the Defendant from M/s Hill Elliott & Co. Ltd. or delivered to the plaintiff. As such there was no question of delivering the possession by the plaintiff to the Defendant.

9. That the Defendant in order to create trouble to the plaintiff and in order to confuse the matter and to side-track the old tenancy, which had been with M/s Hill Elliott & Co. Ltd., who are in possession of the same i.e. the property bearing No. S-323, Panchsheel Park, New Delhi, is pressing upon the plaintiff to vacate the premises.

10. That the alleged demand of the Defendant is totally illegal, unwarranted, unlawful and unjustified. The said lease deed dated 26.12.1989 was never acted upon nor it came in force nor it was implemented and it was decided to treat the same as void and as such at no point of time any rent was paid by the plaintiff to the Defendant s the rent has always been paid by M/s Hill Elliott & Co. Ltd. to the Defendant which was duly accepted by the Defendant.

11. That the said lease deed dated 26.12.1989 is null & void in the eyes of law.

9. It is submitted that the plaintiff, on 21.03.2008, filed an application in AJ's suit conceding to his stand that the present Defendant company continued to be a tenant in respect of the premises. A certified copy of the application has been placed on the record. The relevant part of the said application reads as follows:

3. That in view of the above facts, the plaintiff has been advised that the legal notices which were sent to Mr. A.K. Jhajharia and to M/s Hill Elliot and Co. Ltd. did not terminate the tenancy of M/s Hill Elliot and Co. Ltd. and as such, M/s Hill Elliot and Co. Ltd continues to be monthly tenant in the premises in question.

4. That the plaintiff concedes to the defense taken by the Defendant and admits that M/s Hill Elliot and Co. Ltd continues to be a tenant in the premises in question and as such does not wish to pursue the present suit and wishes to withdraw the same. The plaintiff reserves his right to take appropriate legal action against his tenant M/s Hill Elliot and Co. Ltd in accordance with the law.

5. The plaintiff has been pursuing the present suit under the bona fide belief and advice that the tenancy was changed in the name of Mr. A.K. Jhajharia but now accepts the defense taken by the Defendant. The present application as such, is

made bonafidely and in the interest of justice.

10. The plaintiff filed an application for liberty to withdraw his suit, contending inter alia, that a legal notice had been issued to Hill Elliott to vacate the premises, and that (Hill Elliott) was the tenant. Hill Elliott opposed withdrawal, stating that the suit had to be dismissed. Hill Elliott's reply also stated that:

...The plaintiff it appears is totally confused as to his own stand in respect of the said premises and also as to who is the actual tenant/lessee of the plaintiff. For the reasons best known to him, the plaintiff has filed the suit compelling the answering Defendant to fight a useless and unwanted litigation. That due to the conduct of the plaintiff the answering Defendant have suffered loss and damages to a great extent which the Defendant is entitled to recover from the plaintiff and answering Defendant reserves its right to claim damages by way of appropriate proceedings apart from heavy costs which should be imposed by this Hon''ble Court upon the plaintiff.

3. In reply to para 3 of the application it is submitted that the answering Defendant shall deal with the legal notice referred to in the paragraph under reference at the relevant time if needs so arises. Save and except what are matters of record nothing is admitted. From the averments contained in the para under reference it is clearly establish that the plaintiff has made wrong and incorrect statement on oath in the various pleadings filed by it including the affidavit of evidence and has therefore mislead this Hon''ble Court..."

The plaintiff relies upon the Postal Authorities'' certificate dated 29.10.2008 stating that the notice issued on its behalf was delivered to Hill Elliott on 12.08.2008.

11. In the light of the above, the plaintiff argues that as far as the relief of decree for possession is concerned, there are sufficient materials to enable the Court to deliver judgment and decree the suit to that extent, as they amount to unambiguous admissions by Hill Elliott. The plaintiff relies upon the judgment of a Division Bench of this Court in P.P.A. Impex Pvt. Ltd. Vs. Mangal Sain Mittal, and the judgment of the Supreme Court, reported as Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF), . It is submitted that having regard to the law on admissions, all the relevant ingredients, i.e. the plaintiff's title to the suit property, the Defendant's original status as tenant/lessee with effect from 1982, the Defendant's admission that it continued to be in possession of the suit property uninterruptedly as evident from the pleadings filed by it in the proceedings before the Civil Court and District Judge, amount to unambiguous and clear admissions that can result in a decree.

12. Hill Elliot, while resisting the application submitted that materials relied upon by the plaintiff in the form of its suit and that of AJ, before the Civil Court, stop it (the plaintiff) from contending that a decree for possession should be granted. In this context, Hill Elliott relies upon the plaintiff's written statement in AJ's suit, particularly the following portions:

...The aforesaid company is not at all tenant under the Defendant, when the suit premises were let-out to the plaintiff under the registered lease-deed dated 26-12-1989.

2. Para 2 of the plaint is wrong and denied. It is wrong to suggest that the company mentioned in para 2 of the plaint is in possession of the suit premises. The company is not at all in the possession of the suit premises. It is the plaintiff who is in possession of the suit premises and is residing in the suit premises.

13. Hill Elliott argues that AJ was and continues to be in possession of the suit premises after the lease deed was registered in 1989. Hill Elliott, it is argued had nothing to do with the suit property. It is submitted that the withdrawal of the plaintiff's suit after which a decree for possession was sought against AJ meant nothing, as it did not result in any binding order or decree. In these circumstances, the plaintiff is under an obligation to prove that Hill Elliott was a tenant even after 1989 and continued to be in that status and further that the said tenancy was lawfully terminated. Far from accepting the plea of a decree on admission, submits learned senior counsel for Hill Elliott that the Court should not only reject the application but dismiss the suit itself, as the pleadings in the plaintiff's face demonstrate that it held out right through that AJ's was its tenant.

14. It is submitted that the certified copies of the pleadings by Hill Elliott relied upon as admissions, were basis of an erroneous admission of law. Hill Elliott argues that its Director Shri Malik who deposed in reply to the plaintiff's application for withdrawal of its suit, did so on an erroneous basis. Hill Elliott relies upon a rent receipt dated 19.01.1990, whereby the plaintiff acknowledged the receipt of `24,000/- towards rent in respect of the suit premises from AJ. It is submitted that this document alone is sufficient to non-suit the plaintiff's case and in any event persuade the Court to reject the application under Order XII, Rule 6. The said receipt is as follows:

RENT RECEIPT

Receipt No. 154 Dated 19.10.1990 Property of Mr. Bhupinder Singh Sadana Received with thanks from Sri Ashok Kumar Jhajharia Tenant The sum of Rs. Twenty Four Thousand Only by cheque No. 38687

Rent from Jan 90 to March 90 Rs. 24000/- House No. S-323 Panchsheel Park New Delhi

15. Hill Elliott relies on the judgment reported as Raj Kumar Chawla v. Lucas Indian Services, 2006 (VI) AD (Delhi) 166, to say that not all admissions can result in a decree under Order XII, Rule 6 but only the clear and unambiguous can persuade the Court to draw such a decree. The Defendant's counsel also relied upon the judgment reported as Geo-Group Communications Inc. Vs. IOL Broadband Ltd., and Seth Kewal Ram Mool Chand Anand and Ors. v. Shri S.N. Kapoor, Additional Rent Controller, Delhi, 16 DLT (1979) 93 and Suresh Kumar Jain v. Manoj Kumar, AIR 2009 SC 2554 in support of the submissions, a

Defendant can always explain what he considers are erroneous admissions during the course of further proceedings and trial. It is therefore argued that the Court should not foreclose a trial on the issue of tenancy, its alleged termination and when the plaintiff is entitled to decree for possession.

16. From the above discussion, the following may be deduce as undisputed facts :

- 1) The plaintiff is the owner of the suit premises.
- 2) Creation of tenancy in favor of Hill Elliott with effect from 16.10.1982 through registered lease deed ;
- 3) Continuation by Hill Elliot in the premises after the expiry of the period of lease in 1986 ;
- 4) The circumstance that no registered lease deed was executed by the plaintiff and Hill Elliot, in respect of the suit property, after expiration of the period of lease, sometime in 1986 .
- 5) Execution of a registered lease deed in 1989 between the plaintiff and the AJ.
- 6) The plaintiff's filing a suit in 1993 claiming that a decree for possession and in that suit AJ and Hill Elliott were impleaded as parties; Hill Elliott was a second Defendant.
- 7). AJ filed a suit earlier against the plaintiff (to which proceedings Hill Elliot was not a party) contending that he was not a tenant and that Hill Elliott was a tenant.
- 8) Withdrawal of the plaintiff's suit by moving an application; in reply to the application Hill Elliott did not dispute its earlier position in the written statement filed in 1995 that it was the tenant in possession of the suit property and not A.J.
- 9) Rent receipt issued to AJ by the plaintiff in 1990.
- 10) Hill Elliott placing reliance on a letter to the plaintiff (written by it) on 29.11.1991 pointing out those fresh receipts had to be issued in its favor, as the previous receipts had been wrongly issued in favor of AJ. This letter is at page 53 of the list of documents filed by Hill Elliott and placed on record immediately after page 261 of Part III of the paper book.

The copies of pleadings - plaint and written statement, filed in the plaintiff's previous suit, before the Civil Court establish beyond any doubt that Hill Elliott contested the suit, and unambiguously held out that it continued in the suit premises, in the capacity of a tenant, that such tenancy had not ended, and that its possession was uninterrupted. This plea was persisted, when the plaintiff sought to withdraw the suit; Hill Elliott opposed it, saying that the suit ought to have been dismissed, since it was groundless. Similarly, AJ persisted in the plea - in his suit, as well as in the plaintiff's previous suit, that he was not the tenant, that the premises were not handed over to him ever, in 1989 that Hill Elliot continued in possession as tenant and that even rents were being paid by Hill

Elliott to the plaintiff.

17. During the course of proceedings, the Court had required someone on behalf of the Defendant Hill Elliott to depose on its behalf. Accordingly, Shri. K.G. JhA Jaria, presented himself; he stated on oath about his lack of awareness regarding Hill Elliott's tenancy. He also said that AJ was his brother, and that he was in possession. The Court had issued summons to AJ to appear and depose in the suit, for a fuller adjudication, in view of the plea by Hill Elliot that it was not a tenant, but that he was such tenant. After the Court made the order, AJ moved an application for its recall; the Court, after hearing his counsel, rejected it. Thereafter, AJ did not appear before the Court, in answer to the summons.

18. The entire previous discussion, and the extracts from pleadings of Hill Elliot, would show that it unambiguously and categorically held out that it continued in the premises, and that no one else is in the premises, and that its tenancy is a continuing one. Its counsel's argument, in the present application is two-fold. The first is that the admission was made erroneously, and that its director, Sh. Khemka, was unwell when he affirmed the affidavit, opposing the withdrawal of the plaintiff's previous suit. As far as the admission being erroneous and requiring an opportunity to explain is concerned, Hill Elliot, on the merits, submitted that some documents, particularly the receipt issued for the suit premises, establish that AJ was treated as tenant, even in 1990. The Court, according to counsel, cannot ignore such material, and deprive the opportunity of a full trial in such case. The explanation preferred, i.e. illness of Sh. Khemka, even if taken at face value, is of recent vintage. The affidavit affirmed by him is in respect of the reply to the application for withdrawal. However, Hill Elliot's written statement in the plaintiff's previous suit was filed in 1995; it was verified by Sh. A.K. Jhalaria. The argument that such director is Ahmedabad based, is irrelevant, since there is no denial that he was empowered to depose on behalf of Hill Elliott, and was its director at that time. Besides, in the verification clause in that written statement (of 28th April, 1995) he said that the contents of the written statement were true to his knowledge. Neither he, nor Sh. Khemka, deposed at any time, in the Civil Court, before which that suit was filed, that they had made the averments erroneously, or what in fact was the erroneous statement. In these circumstances, the argument that the admission was erroneous, needing explanation has to be rejected. The Court is also conscious that AJ too had supported the company's plea; the latter in fact has stated that he is a brother of Hill Elliot's directors - a fact corroborated by Sh. K.G. Jhaharia, who deposed in Court. In these circumstances, and in the absence of any other plea about the company's shareholding, the Court can not only draw an adverse inference against Hill Elliot, but even proceed to hold that it and AJ were, and are acting in concert, and bent upon continuing in the premises. As a postscript, it may be noticed that if indeed, Hill Elliott is not in possession, it should not even have had any objection to the Court making appropriate orders in this case. Both Hill Elliott, and AJ have been taking advantage of the legal system, and making averments, at their convenience, with the view of depriving the plaintiff the right

to secure his premises. Till date, there is no material placed by Hill Elliot (or anyone) before any Court, proving that the tenancy in respect of the premises was extended any time after 1992. The pleas and explanations of Hill Elliott about the admissions being erroneous are not only hollow, but lacking in bona fides. They are accordingly rejected.

19. As far as the argument that the plaintiff is stopped from claiming a decree is concerned, the Court holds that no doubt the written statement in AJ's suit, and the suit against him do contain averments that he was a tenant after 1989. However, in view of Hill Elliot's categorical admission, and AJ's continuing with the plea that Hill Elliott was a tenant, the plaintiff reversed the position, accepted the stand and submitted that appropriate steps to seek eviction of the company would be taken. The Court notices that though the latter position was inconsistent with the former that is itself an admission that Hill Elliot was the tenant of the premises. There is nothing in law which prevents a party to a litigation admitting to the other party's case; that is exactly what happened with the plaintiff. Moreover, there is no denial about the plaintiff's title to the property, and that there was no registered lease, after 1992, even if the lease of 1989 is assumed to have been binding. This Court is also of the opinion, that apart from the admission in pleadings in the previous proceeding, there is yet another document which unambiguously admits that Hill Elliot continued in the premises, and paid rent. This is its letter (a copy of which was filed by it in Court) to the plaintiff dated 29.11.1991 pointing out that fresh receipts had to be issued to it as the previous receipts had been wrongly issued in favor of AJ (this letter is at page 53 of the list of documents filed by the Defendant company and placed on record immediately after page 261 of Part III of the paper book). In the conspectus of facts, the Court sees no legal impediment in the plaintiff seeking a decree on admission. The materials, in the form of pleadings and undisputed documents, according to the Court, constitute clear and unambiguous admission enabling the drawing of a decree for possession, against Hill Elliott.

20. So far as issuance of the notice requiring vacant possession of the premises is concerned, the plaintiff has placed on record, a copy of the legal notice, as well as a certificate of the postal authorities, stating that the said letter had been delivered to Hill Elliot. These materials are sufficient for the Court to draw an inference of proper service, based on Section 27 of the General Clauses Act, 1897, and the judgment of the Supreme Court, in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, , where it was held that:

Here the notice is returned as unclaimed and not as refused. Will there be any significant difference between the two so far as the presumption of service is concerned? In this connection a reference to Section 27 of the General Clauses Act will be useful. The section reads thus:

27. Meaning of service by post.-Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or

"send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, preparing and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

24. No doubt Section 138 of the Act does not require that the notice should be given only by "post". Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sender unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice.

21. For the above reasons, the plaintiff's application for a decree on admission has to succeed; IA 9073/2010 is therefore, allowed. The suit, as far as it claims the relief of a decree for possession is decreed. In the circumstances of the case, Hill Elliott shall bear the costs of this application, quantified at `2,00,000/- to the plaintiff, within two weeks. Vacant possession of the suit premises shall be handed over to the plaintiff within four weeks.