
(2010) 07 DEL CK 0247

In the Delhi High Court

Case No : Regular First Appeal 342 of 2010

Cotton Corporation of India Ltd.

APPELLANT

Vs

N.S. Katoch and Another

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Transfer of Property Act, 1882 — Section 106

Citation : (2010) 07 DEL CK 0247

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : Rohit Kumar Yadav, for the Appellant; C.M. Oberoi, Pratap Venugopal and Ms. Surekha Raman, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—With the consent of the parties, present appeal is taken up for final hearing and disposal.

2. Learned Counsel for the parties submit that it is not necessary to call for the trial court record as the pleadings and documents, sought to be relied upon, are already on record.

3. Present appeal is directed against the judgment and decree passed by learned Additional District Judge dated 24.02.2010 decreeing the suit of the plaintiff for possession on an application filed by the plaintiff under Order XII Rule 6 of the CPC Code, 1908.

4. The facts in brief being that the respondents N S Katoch and Karuneshwar Katoch, in the present appeal, are the owner of the property bearing Flat no.604, Ansal Bhawan, 16, Kasturba Gandhi Marg, New Delhi, hereinafter as tenanted premises. The tenanted premises were let out to The Cotton Corporation India Ltd., (hereinafter referred to as "the appellant"), by Smt. Maya Katoch vide a registered lease deed dated 31.01.1974 for a period of three years commencing

w.e.f. 12.06.1973. As per the terms of lease deed, in case lessee (appellant herein) was desirous of renewing the lease for a further term of two years, prior intimation on the part of lessee via notice in writing was required for the same, at least three months before the expiry of the lease. The lease deed expired on 11.06.1976 to which no renewal was sought and the appellant continued as a tenant holding over month to month. This lease continued uptill the period it was terminated by a notice issued by the respondents herein dated 16.04.2009. Last paid rent being Rs. 16,897/- per month, paid by the appellant.

5. On 16.04.2009, a legal notice to quit was served upon the appellant by the respondent. The appellant was, inter alia, called upon to vacate the tenanted premises and deliver the possession thereof to which the appellant replied on 08.05.2009. As per the respondent, after service of notice of termination of tenancy, landlords refused to accept any amount towards rent. Although the appellant herein continued to send cheques towards rent which were not encashed by the respondents herein. On 05.10.2009, a civil suit no. 343/2009 was filed by the respondent before the trial court for recovery of possession, arrears of rent and mesne profits/damages. The respondents filed an application under Order XII rule 6 CPC seeking a decree on the basis of the admissions made by the defendant in its written statement. The learned trial Court passed a decree on the basis of admissions made by the appellant herein, holding that nothing survives in the defence of the tenant against a decree for possession.

6. Learned Counsel appearing for the appellant has assailed the judgment and decree on the ground that the impugned judgment and decree is arbitrary and the trial court failed to consider the provisions of Order 12 Rule 6 CPC in the right prospective.

7. Counsel for the appellant further submits that the trial court has failed to consider that the admission must be unequivocal and unambiguous.

8. It is contended that the trial court has failed to appreciate that the issues raised by the appellants were contentious in nature which could only be adjudicated upon after proper trial. It is further contended that according to the terms and conditions of the lease, the lease was to be extended for a further period of three years after its expiry simply by enhancing the rent by 15%. It is also contended that the tenancy could not have been terminated by the respondents and the same continues from month to month.

9. Mr. C.M. Oberoi, Learned Counsel for the respondents, submits that the law with regard to the provisions of Order 12 Rule 6 CPC has been a subject matter of various decisions. Counsel further submits that it is a well-settled that the object of Order 12 Rule 6 CPC is to enable a party to obtain speedy judgment at least to extent of the relief to which according to the admission of the defendant, the plaintiff would be entitled to.

10. Counsel for the respondents has placed reliance on Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others, , wherein the Supreme Court in

Para 12 has observed as under; "As to the object of the Order XII Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed." Counsel for the respondents further submits that the receipt and service of a notice as per the provisions of the section 106 of the Transfer of the Property Act has not been disputed; in fact the appellant has replied to the legal notice. Counsel submits that it is also not disputed that tenancy was on a month to month basis and the rent being paid was Rs.16,897/-. Counsel also submits that the appellant has admitted the relationship of landlord and tenant, the service of the legal notice terminating the tenancy, the rate of rent last paid and, thus, on the basis of these admissions the trial court has rightly passed the decree. It is further contended that there is no infirmity in the judgment and decree which has been passed by the learned Additional District Judge.

11. Counsel for the respondents relies upon National Textile Corporation Limited & Anr. Vs. Ashval Vadera, reported at 2010 IV AD (Delh) 705 ; Mrs. Rama Ghei Vs. U.P. State Handloom Corpn., ; Deluxe Stores vs. Allahabad Bank (Delhi High Court) decided on 18.4.2006; Pooja Aggarwal Vs. Sakata Inx. (India) Ltd., decided on 2.9.2008; Gulab Singh and Sons Pvt Ltd. Vs. The New India Assurance Co. Ltd., ; Jindal Dychem Industries Pvt. Ltd. Vs. Pahwa International Pvt. Ltd., decided on 21.8.2009; and I.T.D.C. Ltd. Vs. Chander Pal Sood and Son, in support of his submission.

12. Learned Counsel for the appellant submits that the appellant has made the following admission in the written statement:

(a) That the plaintiffs (respondents herein) are the owners/landlords of the tenanted premises let out to the defendant.

(b) The rate of rent last paid before the issuance of notice of termination dated 16.4.2009 was Rs.16,897/- per month.

(c) Legal notice dated 16.4.2009 terminating the month-to-month tenancy was received by the defendant on 22.4.2009.

(d) No lease deed was executed in favour of the defendant (appellant herein) after the expiry of the lease deed dated 31.1.1974, which expired on 16.4.1976.

13. Learned Counsel for the respondents submits that in view of the clear

unambiguous and equivocal admissions the trial court has rightly decreed the suit in favour of the landlord.

14. I have heard counsel for the parties and given my thoughtful consideration to the matter. Order XII Rule 6 of the CPC 1908 reads as under:

XII (6). Judgment on admissions. - (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

15. It was observed in the case of Shri Rajiv Sharma and Another Vs. Shri Rajiv Gupta, , that the purpose of Order XII Rule 6 of the CPC is to enable the party to obtain speedy justice to the extent of relevant admission, which according to the admission, if the other party is entitled for. Admission on which judgment can be claimed must be clear and unequivocal. In the case of Ms. Rohini Varshnei Vs. R.B. Singh, it has been held as under; "it is trite to say that in order to obtain judgment on admission, the admissions must be clear and unequivocal. In the matter of landlord and tenant there are only three aspects which are required to be examined - (i) Relationship of landlord and tenant; (ii) expiry of tenancy by a flux of time or determination of valid notice to quit; and (iii) the rent of the premises being more than Rs.3500/-, per month, in view of the Act".

16. Applying the settled principle of law to the facts of this case and on reading of the written statement filed by the defendant appellant herein would show that the appellant has admitted that the respondents herein are the owners/landlords of the tenanted premises let out to the appellant; the rate of rent last paid before issuance of notice of termination dated 16.4.2009 was Rs.16,897/- per month; legal notice dated 16.4.2009 terminating the month-to-month tenancy was received by the appellant on 22.4.2009; and no lease deed was executed in favour of the appellant after the expiry of the lease deed dated 31.1.1974, which expired on 16.4.1976. There is no force in the submission of counsel for the appellant that tenancy was orally extended from time to time for a period of three years with 15 percent increase in rent. In the absence of any registered lease deed the tenancy was extended from month to month. The notice of termination dated 16.4.2009 was served on the appellant herein. As per notice the tenancy was to expire on 11.5.2009. The notice was duly served and received on 22.4.2009, which is evident from the fact that the same was acknowledged and replied to on 8.5.2009, copy of which has been placed on record. This would show that the second important ingredient also stands duly met.

17. Reading the provisions of Order XII Rule 6 CPC would show that a decree can be passed either on admission of facts or on question of law. Almost similar question arose for consideration in I.T.D.C. Ltd. Vs. Chander Pal Sood and Son, before the Division Bench of this Court. In face of the admission as to the relationship of landlord and tenant, the service of notice terminating the tenancy, the tenant was required to vacate the premises by the end of the tenancy and the fact that the tenancy was month to month basis the court came to the conclusion that nothing survives in the defence of the tenant and a decree of possession could be passed on admitted facts. The other pleas raised by the defendants in the written statement were held to be of no relevance.

18. Learned Counsel for the appellant has failed to point out any infirmity in the legal notice nor has receipt thereof been denied. The appellant has also admitted that the last paid rent was Rs.16,897/- which would show that the rent was far and in excess of Rs.3500/-. The plea raised by the appellant that the tenancy stands extended because of enhancement of rent by 15 % has been accepted by the respondents has no force in view of the fact that mere acceptance of rent does not amount to waiver and more so in the present case despite the rent having been sent the respondents did not accept the same. Having regard to the facts of this case and the settled position of law and taking into consideration that the relationship of landlord and tenant is admitted; a valid legal notice was issued terminating the tenancy which was duly received by the appellant and replied to; and the rate of rent being more than Rs.3500/-, I do not find infirmity in the judgment and decree passed by the learned trial court. Accordingly, appeal stands dismissed.

CM No. 9780/2010 (STAY).

19. Dismissed in view of the orders passed in the appeal.