

(2012) 04 DEL CK 0239

In the Delhi High Court

Case No : IA No. 1004 of 2011 in CS (OS) 938 of 2010

Ghanshyam Dass Soni and Another

APPELLANT

Vs

Sundri Apparels (India) Pvt. Ltd.

RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 8 Rule 5, 151

General Clauses Act, 1897 — Section 27

Transfer of Property Act, 1882 — Section 114

Citation : (2013) 5 AD 264 : (2013) 196 DLT 196

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : A.B. Dial with Ms. Ananya Datta Majumdar, for the Appellant; R.L. Kohli, for the Respondent

Judgement

Kailash Gambhir, J.—By this application filed under Order 12 Rule 6 read with Section 151 of the Code of Civil Procedure, 1908, the plaintiffs seek a decree for recovery of possession of the suit premises bearing numbers 15A/53, 15A/54 (ground floor), W.E.A., Ajmal Khan Road, Karol Bagh, New Delhi against the defendant based on the admissions in the written statement. Before proceeding to decide this application, it would be appropriate to give a gist of the facts of the present case. The plaintiff has filed the present suit for possession and recovery of arrears of rent and damages and mesne profits. Plaintiffs have claimed themselves to be the owners of the shop bearing numbers 15A/53, 15A/54 (ground floor), W.E.A., Ajmal Khan Road, Karol Bagh, New Delhi and the said subject property was leased out by the plaintiff in favour of the defendant for a period of nine years w.e.f. 1.7.2004 vide lease deed dated 26.7.2004 duly registered vide document number 5381 in Additional Book No. 1, Volume No. 11147 on pages 108-115 in the Office of the Sub-Registrar III. It is the case of the plaintiff that initially the rent of the suit property was fixed at Rs. 3,31,000/- payable by the defendant in advance on or before seventh day of each calendar month. It was also agreed between the parties that the defendants were to pay

monthly rent by way of two separate cheques of Rs. 1,65,000/- to each of the plaintiffs. It is also the case of the plaintiffs that in terms of Clause 4 of the Lease Deed, the agreed rent was to be escalated by 12.5% w.e.f. 1.7.2007 and further increase at the same rate w.e.f. 1.7.2010. It is also the case of the plaintiff that the defendant continued to pay increased rent @ Rs. 1,86,187/- along with applicable service tax to each of the plaintiffs but from April 2009 the defendant defaulted in making payment of the rent. It is also the case of the plaintiffs that some of the cheques issued by the defendant towards outstanding amount of rent were dishonoured and vide registered letters dated 5.6.2009, 15.6.2009, 21.7.2009, 15.9.2009 & 5.10.2009 the plaintiffs called upon the defendant to replace the said dishonoured cheques within a period of 15 days. Receiving no response from the defendant, the plaintiffs vide legal notice dated 21.12.2009 terminated the tenancy of the defendant. The plaintiffs also sent various reminders and on the failure of the defendant to make payment of outstanding rent amount, the plaintiffs issued final legal notice dated 26.3.2010 through registered AD post thereby calling upon the defendant to pay a sum of Rs. 12,10,055/- towards arrears of rent along with interest @ 18% per annum as due and outstanding to plaintiff No. 1 and sum of Rs. 16,14,213/- as outstanding in favour of plaintiff No. 2. Based on these facts, the plaintiff has claimed a decree of possession, decree for recovery of arrears of rent and damages, etc. from the defendant. In the written statement filed by the defendant the main defence raised is that they are entitled to claim benefit of Section 114 of the Transfer of Property Act, 1882 as they are prepared to make payment of outstanding rent amount alongwith interest and cost of the suit, etc. In reply to the main paras of the plaint, the defendant has admitted the lease and execution of the lease deed dated 26.7.2004. The defendants have also admitted the rate of rent and subsequent escalation in the rate of rent. In para 16 of the written statement the defendant has taken a stand that there is no question of determination of tenancy and payment of any damages by them in view of the fact that they claimed relief against forfeiture in terms of Section 114 of the Transfer of Property Act.

2. Addressing arguments on the present application, Mr. A.B. Dial learned Senior Counsel for the plaintiffs submits that the plaintiffs are straightaway entitled to decree of possession in terms of Order 12 Rule 6 based on the clear, unequivocal and unambiguous admission of facts made by the defendant in the written statement to the averments of the plaintiff. Counsel further submits that for claiming decree of possession the plaintiffs have to prove three essential components, firstly relationship between the parties, that of landlord and tenant, secondly nonpayment of rent/damages by the defendant and thirdly determination of the tenancy of the defendant. Counsel further submits that there is a pre-admission of these facts by the defendant in their written statement and they have admitted the factum of the tenancy created between the parties in terms of the lease deed dated 26.7.2004. The Counsel further submits that the defendant has also admitted their outstanding liability towards

arrears of rent and this admission on the part of the defendant is apparent from the fact that they have shown their willingness to pay the entire arrears of rent along with interest and cost of suit. So far as the aspect of termination of tenancy is concerned, Counsel for the plaintiffs has taken a stand that tenancy of the defendant was duly terminated through various letters more particularly through letter dated 24.2.2010 and through notice dated 26.5.2011. Counsel also submits that the determination of tenancy is also evident from the fact that the defendants have not traversed paras 15 & 16 of the plaint wherein the plaintiff took a categorical stand with regard to the termination of the tenancy through letters dated 24.2.2010 and legal notice dated 26.3.2010. Counsel further submits that plaintiffs have placed on record various acknowledgement cards and postal receipts to prima-facie show that the said letters and notices were sent to the defendant through registered AD/speed post.

3. Opposing the present application, Mr. R.L. Kohli, Advocate submits that no notice as per the requirement of Clause 8 and Clause 27 of the lease deed was sent by the plaintiff by registered AD post. Counsel further submits that the requirement laid down in the said two clauses is that the notice is not to be merely sent by the plaintiff but the plaintiff has to ensure that the notice is duly served upon the defendant. Counsel thus states that no notice has ever been sent and served by the plaintiffs. Counsel also submits that the legal notice dated 21st December, 2009 was never sent by the plaintiffs by registered A.D. post as the plaintiffs have not placed on record any registered A.D. card to prove service of the said notice upon the defendant. Counsel also submits that the letters which were sent by the plaintiffs only stipulate that the plaintiffs would be filing civil and criminal action against the defendant for non-payment of the rent by the defendant and even those letters have not even served by the plaintiffs. Counsel further submits that name of the defendant M/s. Sundri Apparels (India) Pvt. Ltd. was changed to M/s. Vasari India Pvt. Ltd. from 20th July, 2009 and this fact was within the knowledge of the plaintiffs as the plaintiffs had filed an amended memo of parties to substitute the name of M/s. Vasari India Pvt. Ltd. in place of M/s. Sundri Apparels (India) Pvt. Ltd. but yet no notice to the said new company was sent by the plaintiffs. Counsel also submits that the said new company i.e. M/s. Vasari India Pvt. Ltd. had been sending the cheques to the plaintiffs and the same were being accepted by them and that some of the cheques have also been placed on record by the plaintiff. Counsel further submits that no allegations of non-payment of rent were levelled by the plaintiffs against M/s. Vasari India Pvt. Ltd. and no notice was sent by the plaintiffs to M/s. Vasari India Pvt. Ltd., and thus no opportunity was given to the said new company to make the payment of the outstanding rent. Counsel further submits that the A.D. cards placed on record by the plaintiff nowhere show the signature of Mr. Mahesh Chand, Director of the said company. Counsel further submits that some of these A.D. cards bear the seals of Reganpura address of M/s. Sundri Apparels (India) Pvt. Ltd. Counsel further submits that A.D. card dated 13th July, 2009 even does not bear the correct address of M/s. Sundri Apparels (India) Pvt. Ltd. as phase

"V" is not mentioned and so far as the A.D. card dated 22nd July, 2009 is concerned, the same does not bear the signature of the addressee. Counsel further submits that the A.D. card dated 6.10.2009 bears the incorrect address of M/s. Sundri Apparels (India) Pvt. Ltd. as the same records the address of the said company at Phase V6. Counsel further submits that the defendant in the written statement has denied paras 11, 15 and has specifically denied para 16 of the plaint disputing the determination of the tenancy by the plaintiffs or receiving any notice of the plaintiffs. Counsel for the defendant fairly submits that defendant is not claiming the benefit of Section 114 of the Transfer of the Property Act as the defendant could not make the payment of the entire due rent.

4. I have heard learned Counsel for the parties and have given my thoughtful consideration to the arguments advanced by them. I have also carefully gone through the documents placed on record by the parties.

5. The admission made by the defendant in the written statement thereby admitting the execution of the lease deed dated 26.7.2004, their liability of the payment of outstanding amount of rent to the plaintiff and an evasive denial with regard to the termination of their tenancy prompted the plaintiff to move the present application under Order 12 Rule 6, CPC to claim decree of possession based on the said admissions. In reply to the said application of the plaintiff under Order 12 Rule 6, CPC, the defendant has taken an additional defence that plaintiffs have filed a suit against a wrong and non-existing name and it is only when the defendant have pointed out impleadment of a wrong defendant in the present case, the plaintiff then had substituted name of M/s. Vasari India Pvt. Ltd., by filing a mended memo of parties. In this reply again the defendant reiterated that they are entitled to relief in terms of Section 114 of the Transfer of Property Act.

6. Before dealing with the said rival contentions raised by the Counsel for the parties, it would be worthwhile to reproduce some of the relevant paras of the plaint and reply given by the defendant to the same in the written statement.

*Para 4 of the plaint--Accordingly the suit property was leased by the plaintiffs to the defendant for a period of 9 years commencing from 1.7.2004 and possession of the property was delivered to the defendant by the plaintiffs. A lease deed dated 26.7.2004 containing the terms and conditions of the lease was duly executed between the parties in this regard and it was registered as document No. 5381 in Additional Book No. 1, Volume No. 11147 on pages 108-115 in the Office of the Sub-Registrar-III, Delhi on 26.7.2004

Para 4 of the written statement--That para No. 4 of the plaint is admitted that the lease is for a period of nine years w.e.f. 1.7.2004 and the lease deed was duly executed and registered with the Sub-Registrar on 26.7.2004.

*Para 5 of the plaint--

5. That the initial monthly rent of the suit property was fixed at Rs. 3,31,000/--

which was to be paid in advance on or before 7th day of each English calendar month by the defendant to plaintiffs. The tenancy month was the English calendar month. The defendant was to pay by the monthly rent way of cheques a sum of Rs. 1,65,000/- to each of the plaintiffs. The defendant paid the rent for the first three years of the tenancy by post dated cheques in advance. The defendant also paid a sum of Rs. 6,62,000/- by way of two cheques of Rs. 3,31,000/- to each of the plaintiffs by way of security which is refundable to the defendant at the time of vacation of the property after adjusting the dues, damages and claims of the plaintiff, if any.

Para 5 of the written statement--

That para No. 5 of the plaint is admitted that the agreed rate of rent payable to the lessors i.e., the plaintiffs was Rs. 3,31,000/- per month (Rupees three lakhs thirty one thousand only) i.e. each of the lessors was to be paid a sum of Rs. 1,65,000/- after deducting the applicable TDS. It is submitted that the defendant had also paid a sum of Rs. 6,62,000/- by way of two cheques of Rs. 3,31,000/- each to each of the plaintiffs by way of refundable security. It is submitted that out of the rent payable the defendant was entitled to deduct the applicable TDS.

*Para 9 of the plaint--

9..."The details of the defaulted amount of rent are as under:

Plaintiff No. 1.

The month wise details of the defaulted amount are given in schedules I and II to the plaint which may be read as part of the plaint.

Para 9 of the written statement:

That para No. 9 of the plaint is not correctly stated and is hence controverted. It is submitted that the defendant is liable to pay the arrears of rent to the plaintiffs as per Annexure "A" and "B" annexed hereto which may be read as part of this para of the written statement. It is submitted that accordingly the defendant is liable to pay to the plaintiff No. 1 only a sum of Rs. 11,03,249/- and Rs. 675/- claimed by the plaintiff totalling Rs. 11,03,924/- till 30.4.2010 and similarly the defendant is liable to pay to plaintiff No. 2 a sum of Rs. 14,75,939/- as also Rs. 675/- claimed by plaintiff No. 2 totalling Rs. 14,76,614/- till 30.4.2010.

*Para 12 of the plaint:

12. That again by a registered letter/notice dated 24.2.2010 plaintiff No. 1 wrote to the defendant that he had presented the cheques towards rent issued by the defendant in his favour for the months of November-December, 2009 and January-February, -2010 for encashment through his bank and that all the cheques had been returned with the remarks "funds insufficient/exceeds arrangement". Accordingly plaintiff No. 1 called upon the defendant to make payment of the due amount within 15 days failing which he would be constrained to initiate civil/criminal proceedings against the defendant at his cost, risk and

responsibility.

Para 12 of the written statement:

That para No. 12 of the plaint is admitted only to the extent that some of the cheques were returned as there was financial difficulty and in this respect the defendant had requested the plaintiffs to bear with for some time and not initiate any Court proceedings but to no effect.

*Para 15 of the plaint--

15. When the defendant did not respond even to the aforesaid letters dated 24.2.2010, the plaintiffs issued a final legal notice dated 26.3.2010 through Regd. AD post to the defendant whereby the defendant was intimated that in view of the various defaults in the payment of the rent and the stipulation in the lease deed between the parties, the tenancy of the defendant stood terminated. Accordingly the defendant was called upon to hand over vacant possession of the suit property to the plaintiff. The defendant was also called upon to pay the entire arrears of rent including interest and bank charges then due to the plaintiffs. The defendant was thus called upon to pay a sum of Rs. 12,10,055/- towards arrears of rent including interest @ 18% p.a. and cheque return charges which are due to plaintiff No. 1 and a sum of Rs. 16,14,213/- towards arrears of rent including interest @ 18% p.a. and cheque return charges to plaintiff No. 2 respectively, with costs of notice.

Para 15 of the written statement--

That para No. 15 of the plaint is not correctly stated and hence controverted. There was no real cause for the alleged determination of tenancy just for alleged non-payment of rent. It is submitted that the defendant is still prepared to pay the arrears and the rent till date with interest and cost and accordingly claims the relief against forfeiture u/s 114 of the Transfer of Property Act.

"Para 16 of the plaint:

16. The plaintiffs submit that in view of the above facts and circumstances and the terms of the registered lease deed dated 26.7.2004, the tenancy of the defendant stood terminated on two consecutive defaults in the payment for rent of two consecutive months, which occurred for the first time which the default in payment of full amount of rent for the months of April-May, 2009. In any event, two consecutive defaults have occurred, thereafter, with the passing of each month starting from June 2009 till April, 2010. Thereafter, it is submitted that the tenancy of the defendant as of today stands terminated and the defendant continues to occupy and use the suit property as an unauthorized occupant. Defendant is accordingly liable to pay damages for use and occupation @ Rs. 20,000/- per day as stipulated in Clause 23 of the lease deed for such use and occupation.

Para 16 of the written statement:

That para No. 16 of the plaint is denied. It is submitted that there is no question of determination of tenancy and payment of any damages and more so in view of the fact that the defendant has claimed the relief against forfeiture in terms of Section 114 of the Transfer of Property Act.

***PRAYER OF THE PLAINT:**

It is, therefore, most respectfully prayed that this Hon''ble Court may be pleased to grant the following reliefs to the plaintiffs:

(a) A decree directing the defendant to handover to the plaintiffs vacant possession of the suit property admeasuring 2500 sq. feet in premises bearing Nos. 15A/53 & 15A/54, (Ground Floor), W.E.A., Ajmal Khan Road, Karol Bagh, New Delhi -110 005 as per lease deed dated 26.7.2004;

(b) A decree directing the defendant to pay to plaintiff No. 1 a sum of Rs. 14,33,559/- towards arrears of rent and/or damages for use and occupation, etc. as detailed in Schedule-I to the plaint.

(c) A decree directing the defendant to pay to plain tiff No. 2 a sum of Rs. 18,43,780/- towards arrears of rent and/or damages for use and occupation, etc. as detailed in Schedule-II to the plaint.

(d) A preliminary decree directing an inquiry as to the damages/mesne profits payable to the plaintiffs by the defendant from the institution of the suit until delivery of possession of the suit property to the plaintiffs, which the plaintiffs claim @ Rs. 20000/- per day.

(e) A decree directing the defendant to pay to the plaintiffs interest on the arrears of rent/damages found payable on the date of the suit from the date of the suit till payment @ 18% p.a. as per Clause 24 of the lease deed; and

(f) Award the entire costs of the suit in favour of the plaintiffs, and against the defendant; and

(g) Any other decree/order(s) which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case in favour of the plaintiffs and against the defendant.

PRAYER OF THE WRITTEN STATEMENT:

It is therefore most respectfully prayed that suit of the plaintiffs may kindly be dismissed. It is prayed that as the defendant is prepared to pay the arrears of rent with interest and cost of the suit, the relief against forfeiture may be granted u/s 114 of the Transfer of Property Act.

On a bare reading of the aforesaid averments made by the plaintiffs in the plaint and the averments made by the defendant in the corresponding paras of the written statement, it can be easily deciphered that the admissions on the part of the defendant to the averments of the plaintiffs arc clear and unequivocal. The only defence raised by the defendant in the written statement is that they will be

entitled to the forfeiture clause as envisaged in Section 114 of the Transfer of Property Act as they would be making the payment of entire outstanding rent along with interest and cost. This opportunity to pay the outstanding amount of rent alongwith cost was afforded to the defendant vide order dated 2.2.2011 directing the defendant to pay the entire arrears of rent as were due to the plaintiffs as on the date of the filing of the suit by 31.3.2011 and on the payment of the said amount, the defendant was held entitled to set up a plea u/s 114 of the Transfer of Property Act. Indisputably, the defendant did not come forward to pay the said amount in compliance of the order dated 2.2.11 and therefore the defendant lost the opportunity of raising their defence to defeat the right of the plaintiffs to determine the lease by forfeiture of non-payment of rent. This fact was also duly admitted by the Counsel for the defendant that by not complying with the said order the defendant can no more set up the said defence.

7. Counsel for the defendant made a valiant attempt to argue that before the termination of the tenancy of the defendant the plaintiffs were not only required to send a notice but to serve the same as well through registered AD post. The contention raised by Counsel for the defendant is that even if it is accepted that notice was sent by the plaintiffs then the mere sending of the notice would not meet the requirement of Clause 8 of the Lease Deed which clearly postulates not only the sending of the notice but service as well by Registered AD post. Another contention raised by Counsel for the defendant is that the plaintiffs were well aware of the fact about the change of company name from M/s. Sundri Apparels (India) Pvt. Ltd. to M/s. Vasari India Pvt. Ltd. but no reminder letter/ legal notice was sent by the plaintiffs to the said new company. Both the said arguments raised by Counsel for the defendant are found to be of no merit. For a better appreciation of the said arguments raised by Counsel for the defendant, Clause 8 of the Lease Deed is reproduced as under:

8. That in case any cheque issued by the LESSEE for the payment of rent is dishnoured by the Bankers of the LESSEE and the same is not replaced by the LESSEE by a demand draft/Banker's cheque within 15 days of the notice, it shall constitute default in payment of rent and in case there be such two consecutive defaults for the payment of rent for two consecutive month, the tenancy shall stand determined and terminated. The notice referred to shall be notices sent and served by registered AD post.

It will be seen from the said clause that for two consecutive defaults in the payment of rent, the tenancy of the defendant could be terminated by giving the defendant 15 days notice. Last line of the above clause also states that the notice referred to shall be notice sent and served by Registered A/D post.

8. From the documents placed on record it is quite evident that the plaintiffs have been writing letters to the defendant thereby calling upon the defendant to make payment of arrears of rent failing which the plaintiffs were to initiate civil as well as criminal proceedings against the defendant. The plaintiff has also placed on record various cheques issued by the defendant towards payment of

rent but the same were returned dishonoured. The plaintiffs have also placed on record copy of the letter dated 24.2.2010 addressed to Mahesh Chand Mohnani, Director of the defendant company giving 15 days notice to the defendant to make payment of arrears of rent and on failure to do so the tenancy of the defendant shall stand terminated. The plaintiffs have further placed on record copy of the legal notice dated 26.3.2010 and in the said legal notice the plaintiffs clearly notified the said termination of the tenancy of the defendant on the failure of the defendant to pay the outstanding amount of arrears of rent. The plaintiffs have also placed on record original postal receipts of speed post, original postal receipt of the legal notice dated 26.3.2010 and with the said postal receipts being placed on record, presumption of service of the same arises in favour of the plaintiff u/s 27 of the General Clauses Act, 1897. The admission of the said termination of the tenancy in terms of Clause 8 of the lease deed can also be easily inferred from para Nos. 15, 16 of the written statement wherein the defendant has not controverted the factum of determination of their tenancy as averred by the plaintiff in corresponding paras 15 & 16 of the plaint. It is a settled legal position that where denial is not specific or evasive then allegation made in the plaint shall be deemed to have been admitted.

This rule is known as Doctrine of Non-traverse embodied in Order 8 Rule 5 of the Code of Civil Procedure, 1908 and is applicable where the material averment made in the plaint is not specifically denied by the defendant in the written statement and as such an averment is taken to be admitted. The plaintiffs in paras 15 & 16 of the plaint have made specific allegation with regard to the termination of the tenancy with the defendant while on the other hand defendant in reply have raised a plea that there was no real cause for the alleged termination of the tenancy by the plaintiffs. Whether the cause was real or unreal but the defendant has not disputed the fact that their tenancy was terminated by the plaintiffs. The termination of the tenancy was also borne out from the fact that defendants have not denied their liability to make payment of outstanding arrears of rent/ damages to the plaintiff.

9. Order 12 Rule 6 was brought on the statute book to facilitate speedy justice. It was where there was no controversy about rival claims, it would amount to admission and the judgment can be rendered on that admission, whether in pleadings or otherwise, in writing or orally. However the admissions must be clear, unequivocal, and unambiguous. Though the provision is not mandatory in nature, but the Court has to consider the purpose of the provision while exercising its discretion and in my considered view, this is case fit for exercising this discretion. Here it would be relevant to refer to the judgment of the Apex Court in the case of Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others, , where the scope of Order 12 Rule 6 has been discussed as under:

12. As to the object of the Order 12 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.

13. The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order 12 Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial judge states that the statement made in the proceedings of the Board of Directors meeting and the letter send as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute. And the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable.

Thus in the backdrop of the above legal position, in the facts of the case at hand, this Court finds that there is clear, unequivocal and unambiguous admission on the part of the defendant and therefore the plaintiff is entitled to judgment and decree in terms of Order 12 Rule 6. The present suit filed by the plaintiff for the recovery of possession in respect of suit property is accordingly decreed in favour of the plaintiff and against the defendant.

Decree sheet be drawn accordingly.