

(2009) 08 DEL CK 0178

In the Delhi High Court

Case No : I.A. No. 5765/09 in CS (OS) 1216 of 2008

Jindal Dyechem Industries Pvt. Ltd.

APPELLANT

Vs

Pahwa International Pvt. Ltd.

RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

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

General Clauses Act, 1897 — Section 27

Transfer of Property Act, 1882 — Section 106, 111A

Citation : (2010) 1 ILR Delhi 245

Hon'ble Judges : S.L. Bhayana, J

Bench : Single Bench

Advocate : Awtar Singh, for the Appellant; Akshay Makhija, for the Respondent

Final Decision : Allowed

Judgement

S.L. Bhayana, J.—By this order, I propose to dispose of the plaintiff's application under Order XII Rule VI CPC for judgment on admission in respect of the suit property in view of the admission as to relationship of landlord and the tenant, rate of rent, and termination of tenancy by way of notice.

2. The plaintiff has filed the suit for eviction of the defendant from the suit property bearing number C-42, Wazirpur, Industrial Area, New Delhi and for recovery of rupees fifteen lakhs as damages for illegal use and occupation and future damages from the date of filing of suit till the date of decree.

3. Briefly stating the case set up by the applicant/plaintiff in the suit is that:

(i) By way of oral agreement suit premises were let out to the Non applicant/defendant at a monthly rent of rupees two lakhs and eleven thousand excluding water and electricity charges.

(ii) The tenancy in respect of suit property was month to month according to English calendar starting from 15th day of each English calendar month and was to expire on the 14th day of the subsequent English calendar month.

(iii) Vide legal notice dated 09/10/07 u/s 106 TPA tenancy was terminated by the plaintiff and the defendant was called upon to hand over the peaceful and vacant possession of the suit property.

(iv) Another communication dated 24.10.07 was also sent to the defendant regarding the termination of the tenancy.

(v) After initial notice plaintiff does not accept any rent for use and occupation. Since the defendant failed to hand over the possession of the suit property, relief has been sought through instant suit.

4. The defendant resisted the instant suit by contending that the plaintiff has let out the suit premises for a period of six years commencing from 01.04.04 at a monthly rental of rupees 2,11,000/- and thus lease between the plaintiff and defendant is still subsisting and the plaintiff is deliberately refusing to accept rent since November 2007. The defendant has specifically disputed the fact of service of notice of termination of tenancy.

5. In a matter pertaining to ejectment of tenant in Delhi three admissions are sufficient to entitle the plaintiff to a decree on admission where:

(i) The relationship of tenant and landlord is admitted.

(ii) Termination of tenancy is admitted.

(iii) Rate of rent is admittedly more than Rs. 3,500/- per month, Defendants would be entitled to judgment under order 12 R.6 (see *Laxmikant Shrikanth HUF v. M.N. Dastoor* 71 (1978) DLT 564 and *K. Kishore and construction HUF v. Allahabad Bank* 71 (1978) DLT 581).

6. As regards the provision of Order XII Rule VI CPC is concerned, it is well settled that a decree can be passed either on admission of facts or on question of law. Dealing with objective and scope of Order XII Rule VI CPC, Supreme Court has observed in *Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others*, 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 "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.

7. This issue has also been dealt by this Court in the case of *Delhi Jal Board Vs.*

Surendra P. Malik, and Shri Rajiv Sharma and Anr. v. Sh. Rajiv Gupta AIR 2004 DEL 248.

8. Coming back now to the facts of this case there is no dispute as to the relationship of the landlord and the tenant between the parties, it is also not disputed fact that the rate of rent was more than Rs. 3500/- per month. The only fact, which is disputed by the defendant, is about the service of termination Notice.

9. The moot question which arises for consideration in this application is whether notice dated 09.10.2007 would amount to be served upon the defendant/non applicants or not?

10. Learned Counsel of the defendant has denied the service of notice of termination of tenancy, it is contended by the defendant that the AD card that has been produced by the plaintiff does not bear any signature of the receiver. Further with respect to the notice dated 27.07.2007 no AD card has been filed by the plaintiff. Ld. Counsel has further contended that in terms of Section 27 of the General Clauses Act, 1897 the presumption of service by registered post is a rebuttable presumption. To support his contention he has relied upon the judgment of Tele Tube Electronics Ltd. Vs. Delhi Sales Tax Appellate Tribunal and Others, and Ram Murti Vs. Bhola Nath and Another, and further contended that the defendant has discharged the initial burden of proof by denying the receipt of the notice in its written statement, accompanied by an affidavit, the burden to prove the valid service and the receipt of notice now shifts on the plaintiff, which can only be discharged by leading evidence in this regard.

11. In support of proof of service of Notice of termination of tenancy plaintiff has placed on record the copy of notice dated 09.10.2007, original postal receipt in respect of the notice dated 09.10.07, original AD, Copy of the letter dated 24.10.07, original postal receipts in respect of the above letter. I have perused the record and found that all the documents placed on record are bearing correct address of the defendant.

12. In view of the record placed by the plaintiff and in light of the fact that the notice was dispatched to the defendant's correct address through registered post and the AD card was also received back from the defendant, the denial in respect of the said notice by the defendant has no value. The rebuttal in this case, does not go beyond a bald and interested denial of service of the notice by the defendant, which does not displace the onus to rebut the presumption of service. I am unable to accept the arguments advanced by the defendant before this Court that by merely saying the AD card bears somebody else's signature, they have discharged the initial burden to rebut the presumption.

13. In my considered view all the requirement of Order XII Rule VI C.P.C are satisfied, as far as the factum of landlord and the tenant relationship; and the factum of amount of rent is above Rs. 3,500/- both is undisputedly admitted by the defendant and in view of the documents placed on record by the plaintiff, the

denial of service of termination of notice is sham and false denial, it was observed by this Court that such kind of bald denial should be ignored in such kind of circumstances. This was so observed in the case of Mrs. Rama Ghei Vs. U.P. State Handloom Corpn., and similar view is reiterated by this Court in the case of Rajiv Saluja Vs. Bhartia Industries Limited and Another, which reads as under:

16. Though in the instant case the service of notice u/s 106 of the Act was not at all necessary because the tenancy had expired by efflux of time by virtue of Section 111A of the T.P. Act but to be on the safer side the plaintiff served notice u/s 106. Mere denial of receipt of such notice cannot come to the rescue of defendant No. 2. Denial is far outweighed by not only postal receipts proving the dispatch at all the addresses of the defendant but also through a certificate from the postal authorities as to the receipt of the notice by the defendants at the suit premises.

17. I have taken a view in Mrs. Rama Ghei Vs. U.P. State Handloom Corpn., that in order to invoke the provisions of Order 12 Rule 6 CPC the Court has to scrutinise the pleadings in their totality and ignore the evasive and unspecific denials either as to the relationship or as to the service of notice or as to the nature of tenancy.

18. If the landlord either under the legal advice or by way of abundant precaution sends notice for termination of tenancy u/s 106 of the T.P. Act after the expiry of tenancy by way of efflux of time his intention is not to terminate the tenancy but to insist and impress upon the tenant to hand over the possession after the expiry of agreed period of tenancy.

14. In any case, the documentary evidence assembled by the plaintiff is sufficient to raise a strong presumption of Section 27 of General Clauses Act that notice had been properly served by the applicant. It would be appropriate to reproduce the language of Section 27 General Clauses Act, 1897, as under:

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, where 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 pre-paying 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.

15 It is apparent from the reading of the section that service shall be deemed to be effectuated by properly addressing, pre paying and posting by registered post, a letter containing the notice. This presumption is no doubt rebuttable but unless it is disproved, dispelled or rebutted, the court can treat the presumption as tantamounting to proof.

16. In M/s. Green View Radio Service Vs. Laxmibai Ramji and another, the

Supreme Court observed as under:

There is a legal presumption that the communication sent by post properly addressed to the addressee is received by him in due course of business and that the acknowledgment was received back from the post office duly signed with the recipient's signature and that acknowledgment is on record. The notice was sent by the respondent-landlord's advocate and the acknowledgment was received at his office. The court further held that Amarjeet Singh, the proprietor of the premises was in the habit of changing his signature from time to time and had signed different documents in different styles. The appellant further did not lead sufficient evidence to rebut the presumption of service. It was admitted by Amarjeet Singh that either he himself or his brother or his employee would always be present in the suit premises. Although he came out with an alibi that he was not present in the premises on the date on which the postal acknowledgment is signed, he has not stated that nobody else was present in the shop on that day and hence nobody could have received the said notice on behalf of the appellant. The courts, therefore, held that the service of the notice on the appellant was proved. Since the rent was admittedly not paid within thirty days of the receipt of the said notice, according to the mandatory provisions of the Act, the appellant was liable to be evicted.

17. Reference may also be made to *Rail India Technical and Economic Services Ltd. Vs. I.M. Puri and Others*, and *M. Nar Singh Rao v. State of Andhra Pradesh* AIR 2001 SC 318.

18. It would be appropriate to appreciate locus classics on the issue in *Harihar Banerji v. Ramshashi Roy* AIR 1918 PC 102 wherein it was observed by Lord Atkinson:

A letter sent under Registered post was held to be giving rise to a stronger presumption especially when a receipt for the letter is produced, even when signed on behalf of addressee by some person other than the addressee himself.

19. Similarly, in *Atma Ram Property Ltd. v. Pal Property Pvt. Ltd.* 91 (2001) DLT 438, this Court has observed:

13. Coming to the service of the notice, the plaintiff has placed on record the copy of the notice sent to the defendants u/s 106 of the Transfer of Property Act. The plaintiff has also placed on record the postal receipt in original by which notice was sent by registered post to the defendants. The plaintiff has also produced on record the original acknowledgement received back which is addressed to Pal Properties India Pvt. Ltd. Address is rightly mentioned as H-72, Connaught Circus, New Delhi. It bears stamp and is signed by some person acknowledging the receipt of the letter.

14. In view of these documents on record it cannot be said that the defendants did not receive the notice. Bare denial would not serve any purpose. [Ref.: *Shimla Development Authority and others Vs. Smt. Santosh Sharma and another*,

254; M/s. Madan and Co. Vs. Wazir Jaivir Chand,

20. To support this application learned Counsel of the plaintiff has relied upon the following judgments which squarely covers the instant case:

(a) Charanjit Lal Mehra and Others Vs. Smt. Kamal Saroj Mahajan and Another,

(b) Surjit Sachdev Vs. Kazakhstan Investment Services Pvt. Ltd. and Others,

(c) Amar Chand Talwar v. Export Promotion Council 1999 RLR 166;

(d) Deenar Builders v. Khoday Distilleries 2000 RLR 50;

(e) Interocean Shipping v. Y.R. Puri 1991 RLR (N) 138.

21. In the net result, IA No. 5765/09, filed by the plaintiff is allowed. The suit of the plaintiff is decreed in so far as recovery of the suit premises is concerned. A decree of possession of the suit premises bearing No. C-42, Wazirpur, Industrial Area, New Delhi be passed in favour of the plaintiff and against the defendant.

22. As far as recovery of damages is concerned let an enquiry under Order XX Rule 12 CPC be held to determine the rate and quantum thereof.

23. List before Joint Registrar on 19th January, 2009 for holding an enquiry under Order XX Rule 12 CPC to determine the rate and quantum of damages.

24. The applications stands disposed of.