

(2015) 03 DEL CK 0258
In the Delhi High Court
Case No : CS (OS) 3391/2012

Kamal Mitra Chenoy and Others

APPELLANT

Vs

Dunlop India Ltd. and Others

RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 12 Rule 6, Order 2 Rule 3
Transfer of Property Act, 1882 — Section 111, 116

Citation : (2015) 03 DEL CK 0258

Hon'ble Judges : Jayant Nath, J.

Bench : Single Bench

Advocate : Sandeep Sethi, Senior Advocate, Sandeep Aggarwal, Amitabh Chaturvedi and Ekta Sukharmani, for the Appellant; Sudhir Nadrajog, Sr. Adv., C. Mukund and Ashok Kumar Jain, Advocates for the Respondent

Final Decision : Allowed

Judgement

Jayant Nath, J.

IA No. 9291/2013

1. This is an application filed under Order XII Rule 6 CPC to pass a decree in terms of the relief sought in the Plaint. As per the amended plaint the plaintiff has filed the present suit for eviction, possession, permanent injunction and damages/mesne profits for property bearing No. 19 in Block No. 171, Sunder Nagar, New Delhi.

2. It is the averment in the plaint that the suit property was let out to defendant No. 1 company by virtue of a registered lease agreement dated 31.7.2009. The lease was for a fixed period of three years commencing 1.8.2009 and expiring on 31.07.2012. As per clause 4 of the lease agreement the property was to be used only for the purpose of residence of defendant No. 2 who is stated to be an ex member of Lok Sabha from the Motihari Constituency of Bihar. The lease is silent about the post defendant No. 2 occupies in defendant No. 1 Company. Alongwith

the lease agreement, a hire agreement dated 1.8.2009 between plaintiff No. 2 and defendant No. 1 was also executed which was co-terminus with the lease agreement. The defendant No. 1 was obliged to pay a sum of Rs.1,60,000/- per month to the plaintiff No. 1 as per the lease agreement and Rs.2,40,000/- per month to plaintiff No. 2 as per the hire agreement being a total of Rs.4,00,000/- per month. In terms of clause 8 of the Lease Agreement the lease was to expire by efflux of time on 31.07.2012.

3. Learned senior counsel appearing for the plaintiff has submitted that there is no dispute or controversy regarding the lease agreement and the terms and conditions of the hire agreement. He submits that both documents are admitted by the defendants. Reliance is placed on various correspondences written to the defendant much prior to the expiry of the lease agreement on 31.07.2012. It is urged that instead of vacating the suit premises on expiry of the lease agreement, the defendants have continued to illegally occupy and trespass in the said premises. He hence submits that the decree for possession can be passed based on these admissions which are self evident from a reading of the written statement and documents.

4. Learned senior counsel appearing for the defendant has made two submissions to submit that no decree under Order 12 Rule 6 CPC can be passed. He firstly submits that the plaintiffs have illegally clubbed the two agreements, namely, the Lease Agreement and the Hire Agreement and thereafter added the rent to make it a monthly rent of Rs.4,00,000/- per month and brought the suit within the pecuniary jurisdiction of this Court. It is submitted that as the rental as per the Lease Agreement is only Rs.1,60,000/- per month and hence the pecuniary jurisdiction would be of District Court and not of this High Court. In this context it is submitted that there is no relief sought qua the second agreement. No relief is sought regarding the fixtures and fittings and hence it is not permissible for the plaintiff to club the rentals payable under the two agreements and file a combined suit. It is further stated that whether the two agreements are coterminous or not are issues which would have to be gone into at the time of the evidence. Reliance is placed on the order of the Division Bench in FAO (OS) 413/2014 dated 19.09.2014 to contend that this issue was left open to be decided at the time of evidence.

5. Learned senior counsel has secondly submitted that a renewal notice was sent to the plaintiffs on 11.8.2012 as admitted by the plaintiff. As this has been received by the plaintiff the lease got renewed. Alongwith the renewal notice it is urged that a demand draft for rent for August 2012 to January 2013 was also sent. On this ground, it is stated that no basis is made out for allowing the present application.

6. In Rejoinder learned senior counsel for the plaintiff has relied on order I Rule 1 CPC and Order II Rule 3 CPC to submit that two cause of actions can be joined. It is urged that having joined the two cause of actions it is the value of the combined relief sought which would determine the pecuniary jurisdiction of the

Court. It is further stated that even otherwise this objection was filed by the defendants based on the original plaint filed by the plaintiff where no relief for mesne profits had been claimed. It is urged that an amendment to the plaint has been allowed and the relief of mesne profits has been added, the valuation of the suit has changed as the plaintiff is seeking mesne profits. The suit after amendment is undisputeably within the pecuniary jurisdiction of this Court. It is further urged that when the request for renewal was received on 11.8.2012, the lease had already expired i.e. on 31.7.2012. Reliance is placed on the judgment of the Supreme Court in the case of Caltex (India) Ltd. Vs. Bhagwan Devi Marodia, to contend that there can be no renewal of a lease if the request is received after expiry of the Lease.

7. As far as the terms and conditions of the Lease Agreement are concerned, the defendants have admitted the terms and conditions of the Lease Agreement. Reference in this context may be had to the relevant paragraphs of the pleadings. Paragraphs 3 and 4 of the plaint read as follows:-

"3. Plaintiff No. 1 had let out the Said Property to Defendant No. 1 company on rent by virtue of a Lease Agreement dated 31.07.2009 (hereinafter referred to as "the Lease Agreement") duly registered as Registration No. 9800 in Addl. Book No.I, Volume 9414 on pages 139 to 144 on 04.08.2009 in the office of Sub-Registrar-V, New Delhi.

4. The Lease was for a fixed period of 03 (three) years commencing on 01.08.2009 and expiring on 31.07.2012. As per clause 4 of the Lease Agreement, it was agreed that the Said Property would be used only for the purposes of residence of Defendant No. 2 and his family. The terms and conditions of the tenancy are set out in the Lease Agreement. The Plaintiffs crave leave to refer and to rely upon the same".

8. Paragraphs 3 and 4 of the written statement of defendant No. 2 read as follows:-

"3 to 5. In reply to the allegation made in Paras 3 to 5 the same are matters of record and save what are matter of records all other allegations are denied and disputed". 9. The relevant para in the written statement of defendant No. 1 reads as follows:-

"3 to 4. The statements made in paragraphs (3) and (4) are matters of record and save what are matters of records, this defendant denies each and every allegation made therein. It is a matter of evidence that all the terms and conditions contained in the Lease Agreement dated 31.07.2009 were subsequently changed and it was agreed that the defendants shall continue with the premises after the expiry of the terms mentioned in the said agreement". 10. Para 7 the plaint clearly states that the lease agreement was to expire with the efflux of time on 31.07.2012. Defendant No. 1 in the written statement said as follows:-

"7. In reply to the allegations made in paragraph(7), it is repeated that all the terms and conditions contained in the agreement got changed and the parties had agreed that the lease was not to expire by efflux of time on 31.03.2012 (presumably a typing mistake) and the defendant would be entitled to continue." 11. Hence, there is no dispute in the pleadings that a Lease Agreement was entered into w.e.f. 31.07.2009 and as per the terms and conditions of the Lease Agreement it was to expire on 31.07.2012. The stand in the pleadings is contrary to the stand of defendants in admission/denial of documents, where defendants have mechanically denied the Lease Agreement and Hire Agreement. However, the stand in the pleadings is what is material.

12. As far as the pecuniary jurisdiction of this Court is concerned, the plaintiff has valued the relief for decree for damages and mesne profit at Rs.30,00,000/- as per the amended plaint. To this figure is added a valuation of Rs.48,00,000/- being the rentals calculated at Rs.4,00,000/- per month.

13. In view of this valuation clause dehors the controversy regarding clubbing of the two Agreements i.e. the Lease Agreement and the Hire Agreement, even solely based on the Lease Agreement only this Court would have the pecuniary jurisdiction to try the suit.

14. Even otherwise, there is no merit in the contention of the plaintiff. Order II Rule 3 CPC reads as follows:-

"3. Joinder of causes of action.-(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit."

15. Hence, a plaintiff can unite in a suit several cause of actions against the same defendant. At best by combining these two Agreements, the plaintiff has united two different cause of actions into one suit against the same set of defendants which is permissible under Order II Rule 3 CPC. Where the cause of actions are united the jurisdiction of the Court is to depend upon the value of the aggregate subject matter. Hence, the plaintiff was entitled to unite two cause of actions and treat the aggregate of the value of the reliefs as appropriate valuation for determining the pecuniary jurisdiction of the Court.

16. There is also no merit in the other contention of the defendant i.e. the issue as to whether the Hire Agreement is co-terminus with the Lease Agreement and that this issue that has to be gone into. Clause 3 of the Hire Agreement clearly stipulates that on expiry of the lease period the Hire Agreement automatically stands cancelled. Clause 5 clearly states that Agreement shall run concurrently

and co-terminus with the lease deed dated 1.8.2009 and shall come automatically to an end on termination of the lease.

17. In the light of these clear clauses in the Agreement which are not denied by the defendant, there is no merit in the said contentions of the defendant.

18. Coming to the next contention of the defendant about renewal of the Lease-Deed. The lease agreement has clause 4 which reads as follows:-

"4. Whenever the Lessee is desirous of renewing the lease period, the Lessee will request the Lessor in writing at least three months in advance before the expiry of the terms of the Lease. Unless specifically agreed in writing by the Lessor, this Lease will not automatically be renewed and expires at the end of the lease period." 19. The Learned senior counsel for the plaintiff has pointed out various communications written by the plaintiffs to the defendant stating that they would not be interested in renewing the Lease Agreement any further after its expiry. These communications are dated 24.01.2012, 09.03.2012, 14.05.2012, 21.05.2012 and 18.06.2012. It is urged that these communications have been duly received by the plaintiff and there was no response from the plaintiff. On 18.6.2012 a legal notice was also sent to the defendant. Needless to add the defendants have denied these communications.

20. The controversy centers around a communication dated 11.08.2012 sent by the defendant No. 1 to plaintiff No. 1. Even this letter, though authored by defendant No. 1 and relied upon by defendant is in a routine manner, denied by the defendant in admission/denial. The said letter allegedly seeking renewal of the lease deed by the defendants read as follows:-

"Sub: Rent for the month of August, 2012 to January, 2013 of 19, Sunder Nagar, New Delhi - 110 003 premises.

Dear Sir,

Please find enclosed herewith Demand Draft no.210798 dated 09.08.2012 for an amount of Rs.8,64,000/- (Rupees Eight Lacs Sixty Four Thousand only) drawn on ICICI Bank Ltd., Connaught Place, New Delhi towards rent for the month of August-2012 to January-2013 against 19, Sunder Nagar, New Delhi - 110003 property after tax deducted at source".

21. Hence, even as per the defendant the request for renewal is made on 11.08.2012 whereas the Lease Agreement has expired on 31.07.2012. A request for renewal has been made after the Lease has expired.

22. In Caltex (India) Ltd. vs. Bhagwan Devi Marodia (supra) the Supreme Court has held that an option for renewal of a Lease has to be exercised strictly within the time limit for the purpose otherwise it will lapse. Paragraph 4 of the judgment reads as follows:-

"4. At common law stipulations as to time in a contract giving an option for renewal of a lease of land were considered to be of the essence of the contract

even if they were not expressed to be so and were construed as conditions precedent. Equity followed the common law rule in respect of such contracts and did not regard the stipulation as to time as not of the essence of the bargain. As stated in Halsbury's Laws of England, 3rd ed., vol. 3, art. 281, p. 165 : "An option for the renewal of a lease, or for the purchase or re-purchase of property, must in all cases be exercised strictly within the time limited for the purpose, otherwise it will lapse." This passage was quoted with approval by Danckwerts L. J. in *Hare v. Nicoll*, [1966] 2 Q.B. 131. A similar statement of law is to be found in Foa's General Law of Landlord and Tenant, 8th ed., Article 453, p. 310, and in Hill and Redman's Law of Landlord and Tenant, 14th ed., p. 54. The reason is that a renewal of a lease is a privilege and if the tenant wishes to claim the privilege he must do so strictly within the time limited for the purpose." 23. In *Shanti Prasad Devi and Another Vs. Shankar Mahto and Others*, the Agreement contained a renewal clause. Paragraphs 18 and 19 of which read as follows:-

"18. We fully agree with the High Court and the first appellate court below that on expiry of period of lease, mere acceptance of rent for the subsequent months in which the lessee continued to occupy the lease premises cannot be said to be a conduct signifying "assent" to the continuance of the lessee even after expiry of lease period. To the legal notice seeking renewal of lease, the lessor gave no reply. The agreement of renewal contained in Clause (7) read with Clause (9) required fulfillment of two conditions; first the exercise of option of renewal by the lessee before the expiry of original period of lease and second, fixation of terms and conditions for the renewed period of lease by mutual consent and in absence thereof through the mediation of local Mukhia or Panchas of the village. The aforesaid renewal Clauses (7) and (9) in the agreement of lease clearly fell within the expression "agreement to the contrary" used in Section 116 of the Transfer of Property Act. Under the aforesaid clauses option to seek renewal was to be exercised before expiry of the lease and on specified conditions.

19. The lessor in the present case had neither expressly nor impliedly agreed for renewal. The renewal as provided in the original contract was required to be obtained by following a specified procedure i.e. on mutually agreed terms or in the alternative through the mediation of Mukhias and Panchas. In the instant case, there is a renewal clause in the contract prescribing a particular period and mode of renewal which was "an agreement to the contrary" within the meaning of Section 116 of the Transfer of Property Act. In the face of specific Clauses (7) and (9) for seeking renewal there could be no implied renewal by "holding over" on mere acceptance of the rent offered by the lessee. In the instant case, option of renewal was exercised not in accordance with the terms of renewal clause that is before the expiry of lease. It was exercised after expiry of lease and the lessee continued to remain in use and occupation of the leased premises. The rent offered was accepted by the lessor for the period the lessee overstayed on the leased premises. The lessee, in the above circumstances, could not claim that he was "holding over" as a lessee within the meaning of Section 116 of the Transfer of Property Act."

24. Hence, the Supreme Court in this case, where renewal was sought after the expiry of the original period of the lease, held the renewal clause not to entitle the lessee for renewal of the lease. The Supreme Court further held that mere expense of the rent does not imply renewal of the lease.

25. Reference may also be had to *Hardesh Ores Pvt. Ltd. Vs. Hede and Company*, . In that case the Supreme Court held that to give effect to renewal of a Lease, a document has to be executed evidencing renewal of the Agreement and there is no concept of automatic renewal of the Lease by mere exercise of option by the Lessee. Para 25 reads as under:-

"25. Having regard to these decisions we must hold that in order to give effect to the renewal of a lease, a document has to be executed evidencing the renewal of the agreement or lease, as the case may be, and there is no concept of automatic renewal of lease by mere exercise of option by the lessee. It is, therefore, not possible to accept the submission urged on behalf of the appellants-plaintiffs that by mere exercise of option claiming renewal, the lease stood renewed automatically and there was no need for executing a document evidencing renewal of the lease." 26. In the present case, as per the plaintiff no Demand Draft was sent with the aforesaid communication dated 11.8.2012 though the letter mentions so. The defendants have asserted that the Demand Draft was sent. The defendant, however, agrees that the Demand Draft has not been encashed. Hence, there is no acceptance in the present case.

27. Hence, firstly the communication dated 11.08.2012 does not stipulate any communication to renew the Lease Agreement. It merely purports to send rent for a certain period. Further, as per the legal position stated above even if the rent has been sent and accepted by the plaintiff it would not have implied automatic renewal of the lease deed. Further a mere communication to renew the lease does not imply renewal of the Lease-Deed. The alleged attempt to renew is also made after expiry of the Lease Deed and contrary to the renewal clause in the Lease Agreement. I have no hesitation in holding that the lease of the suit property never stood renewed.

28. For the purpose of the application of Order XII Rule 6 CPC, I may refer to the judgment of the Division Bench of this Court in the case of *Vijay Mayne vs. Satya Bhushan Kumar*, 142 (2007) DLT 483 where in paragraph 12 this Court held as under:-

"12. It is not necessary to burden this judgment by extracting from the aforesaid authoritative pronouncement as the learned Single Judge has accomplished this exercise with prudence and dexterity. Purpose would be served by summarizing the legal position which is that the purpose and objective in enacting the provision like Order 12 Rule 6 CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted

trial. The admissions can be in the pleadings or otherwise, namely, in documents, correspondence etc. These can be oral or in writing. The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case. No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous. In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored." 29. Reference may also be had to the judgment of the Supreme Court in the case of Usha Rani Jain vs. Nirulas Corner House Pvt. Ltd., 73(1998)DLT 124 para 18 of which reads as follows:-

"18. The object of Order XII Rule 6 CPC is to enable a party to obtain a speedy judgment, at least, to the extent of the admissions of the defendant to which relief the plaintiff is entitled to. The rule permits the passing of the judgment at any stage without waiting for determination of other questions. It is equally settled that before a Court can act under Order 12 Rule 6, the admission must be clear, unambiguous, unconditional and unequivocal. Admissions in pleadings are either actual or constructive. Actual admissions consist of facts expressly admitted either in pleadings or in answer to interrogatories. In a suit for ejectment, the factors which deserves to be taken into consideration in order to enable the Court to pass a decree of possession favour of the plaintiff primarily are:

- 1) Existence of relationship of Lessor and lessee or entry in possession of the suit property by defendant as tenant;
- 2) Determination of such relation in any of the contingencies as envisaged in Section 111 of the Transfer of Property Act."

30. In the present case, relationship of lessor or lessee is admitted. The lease has come to an end by efflux of time. There is no renewal, as pleaded by the defendant. In view of the above facts and legal position, I allow the present application.

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31. In view of the above application having been allowed, I pass a decree of possession in favour of the plaintiff No. 1 and against the defendants directing the defendants to forthwith vacate the suit property bearing No. 19 in Block No. 171, Sunder Nagar, New Delhi and to hand over vacant physical possession of the same to plaintiff No. 1.

32. The issue of mesne profit will survive. List before Joint Registrar on 6th May, 2015 for further proceedings.