

(2004) 08 DEL CK 0002
In the Delhi High Court
Case No : CRP 132 of 2004

Mrs. Kamal Saroj Mahajan

APPELLANT

Vs

Mr. Charanjit Lal Mehra and Others

RESPONDENT

Date of Decision : 25-08-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Delhi Rent Control Act, 1958 — Section 50, 6A, 8
Transfer of Property Act, 1882 — Section 106

Citation : (2004) 113 DLT 788 : (2004) 77 DRJ 82

Hon'ble Judges : Om Prakash Dwivedi, J

Bench : Single Bench

Advocate : Jayant Bhushan and B.S. Mann, R. Mathur, Manish Bishnoi and Anil Dutt, for the Appellant; D.D. Verma, for the Respondent

Judgement

O.P. Dwivedi, J.—The petitioner herein filed a suit for possession/ejectment, arrears of rent and damages/mesne profit against the defendants/respondents alleging therein that premises in question were let out to the respondents/defendants jointly on monthly rental of Rs. 2500/- vide agreement dated 4.9.77. The tenancy commenced on 1.10.77. Rent was increased from time-to-time @ 10%. For the period from 1.9.98 to 31.8.2001, defendants/respondents paid rent @ 3327/- per month. Then on 28.7.2001 plaintiff served a legal notice on the defendant u/s 6-A read with Section 8 of Delhi Rent Control Act (for short the "Act") notifying thereby that the rent will be increased by 10% with effect from 1.9.2001. The said legal notice was duly served on the defendants/respondents. Since the monthly rent of the demised premises becomes Rs. 3659/- with effect from 1.9.2001 which is in excess of Rs. 3500/-, the provisions of Delhi Rent Control Act cease to be applicable to the demised premises. The plaintiff/petitioner then terminated the tenancy of the defendants vide separate legal notice dated 8.10.2001 duly served on the defendants by registered A.D. post on 11.10.2001. plaintiff thereupon filed a suit for recovery of possession as well as for recovery of arrears of rent for the month September-October 2001 and

pendentelite and future and mesne profit/damages @ Rs. 40,000/-.

2. The suit was contested by the defendants by filing separate written statements wherein they took identical stand. The existence of relationship of landlord and tenant between the parties was admitted. It was also admitted that tenancy commenced on 1.10.77 at a monthly rent of Rs. 2500/- under rent note dated 4.9.77. The fact that the rent was increased from time-to-time by serving notice u/s 6-A of DRC Act is also not denied. The service of notice dated 28.7.2001 u/s 6-A of the Act and notice dated 8.10.2001 u/s 106, TP Act was also not denied. The main defense set up by the defendants was that it was not a joint tenancy. Rather their tenancies were separate, independent, distinct and thus they were individually liable to pay rent @ 625/- per month initially. In their written statements defendants made specific reference to the plaintiff's letters dated 3.8.92 and 17.9.92 which according to the defendant support their version that they were separate independent, distinct tenants. It is pleaded in para 5 of the written statement that vide her letter dated 17.9.92 plaintiff/ petitioner had refused to accept the cheque for Rs. 42,000/- as it was tendered only on behalf of one of the defendants. But later on plaintiff accepted cheque No. 134831 dated 24.3.94 for Rs. 60,000/- which was tendered on behalf of all four defendants and this, according to the defendants indicates that the plaintiff herself treated the defendants as separate tenants. According to the defendants their individual share of rent never reached the figure of Rs. 3500/-. So the question of non-applicability of provisions of DRC Act does not arise. Defendants have not specifically disputed that they are liable to pay arrears of rent for the month of September-October, 2001 but denied liability to pay any damages/ mesne profit. The thrust of defendants' contention is that they were separate, individual tenant and their individual rent never touched the figure of Rs. 3500/-, Therefore, their tenancies are governed by DRC Act. The validity of notice u/s 106, TP Act is also challenged on the ground that in the said notice the tenancy has been taken to be one whereas there were four separate tenancies which could not be terminated by a composite notice.

3. On these pleadings learned trial Court framed appropriate issues and when the case was at the stage of evidence, the plaintiff/petitioner herein filed application under Order 12 Rule 6 dated 26.4.2002 for passing a judgment on the admission made in the pleadings. This application was opposed by the respondents by filing a detailed reply thereto. In the said reply defendants took a similar stand as taken in their written statements. After considering the respective submissions of the learned Counsel for the parties and various authorities cited by them, learned ADJ observed that an specific issue has already been framed on the point as to whether defendants were separate tenants @ Rs. 625/- paid per month and this plea can be decided only after parties led evidence in proof of their respective versions. Learned Additional District Judge held that since there was no unequivocal admission in the pleadings, it would not be proper to pass a decree under Order 12 Rule 6, CPC on the basis of admissions. Accordingly, petitioner's application under Order 12 Rule 6, CPC was rejected by the impugned order.

Feeling aggrieved, petitioner/plaintiff has filed this petition.

4. I have heard learned Counsels for the parties and perused the record. Order 12 Rule 6 CPC reads as under:

"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.

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."

5. A bare perusal of Order 12 Rule 6, re-produced above makes it clear that the emphasis is on admission of relevant facts. If the relevant facts have been admitted, the mere fact that the defendants have tried to put their own interpretation to those facts with a view to defeat the claim of the plaintiff would not be a sufficient ground to decline relief under Order 12 Rule 6, CPC. Reference in this connection may be made to some decisions of this Court. In the case of R.N. Sachdeva Vs. Ram Lal Mahajan Charitable Trust, , it was found on facts that the premises were let out to the defendant, although agreement was ostensibly described as an agreement of collaboration. The defendant admitted the collaboration agreement but contended that the agreement had been extended for indefinite period and Therefore plaintiff were not entitled for possession so long as nursing home is being run in the premises. Proper issues had been framed in the case and thereafter the petitioner filed an application under Order 12 Rule 6, CPC. The application was allowed by this Court being of the view that relevant facts have been admitted. It was held that basically it was an agreement of tenancy which stands duly terminated by service of the notice. In another case reported in Atma Ram Properties (P) Ltd. v. Pal Properties (I) Pvt. Ltd. 91 (2001) DLT 438, the facts were that the, plaintiff filed a suit for possession of the property bearing No. H-72, Connaught Circus. Defendant Nos. 1 to 3 were tenants of the said property, part of the said property had been sub-let to defendant No. 4. Tenancy was created by a registered lease deed for a fixed term and the lease expired by efflux of time. Defendant Nos. 1 to 3 had sub-let the premises to defendant No. 4 on monthly rent @ Rs. 24701 /-. The tenancy was terminated by notice dated 11.7.97. In the written statement, defendants took the stand that agreed rent between them and the plaintiff was only Rs. 1400/- per month which is below Rs. 3500/-, Therefore, the suit is barred u/s 50 of Act. ownership of the plaintiff was also denied. Even service of notice u/s 106, TP Act was denied. After completion of pleadings, plaintiff filed an application under Order 12 Rule 6, CPC which was opposed on the similar grounds. The Court observed that the sale deed executed by previous owners has been acted upon in other proceedings, Therefore, passing of decree under Order 12 Rule 6, CPC

need not be deferred only for formal proof of sale deed. On the point of termination of tenancy it was held that the lease has expired as it was a fixed term tenancy created by a registered deed. Besides, notice u/s 106, TP Act was duly served. Postal receipt have been placed on record. The plea regarding rent being less than Rs. 3500/- was negated on the strength of the decision of the Supreme Court in the case of P.S. Jain Company Ltd. v. Atma Ram properties (P) Ltd., reported in 65 (1997) DLT 307, wherein it was held that since the tenant himself had sub-let a part of demised premises @ Rs. 24701/- per month the case is not covered under the provisions of Delhi Rent Control Act. A.K. Sikri, J. repelled the contention of the defendant that the decree under Order 12 Rule 6, CPC should not be passed as the resolution authorising plaintiff's attorney to institute the suit and the notice u/s 106 of the TP Act has to be formally proved. It was observed that once the relevant facts are admitted, there is no need to defer passing of decree under Order 12 Rule 6, CPC if on proper interpretation of relevant documents the petitioner is entitled to the decree. As against this, learned Counsel for the respondent cited a decision of the High Court of Calcutta in the case of AIR 1920 Cal (163), In that case the application under Order 12 Rule 6, CPC was declined because one of the plea taken by the defendant in written statement was that the suit itself was pre-mature even though defendant had offered to pay part of amount claimed. In the present case following relevant facts are admitted:

- (1) there exists relationship of land lord and tenant between the parties;
- (2) notice of termination u/s 106 of TP Act has been duly served and notice for enhancement of rent from time to time u/s 6-A of the Act had also been served;
- (3) the rate of rent exceeded Rs. 3500/-p.m. when the notice u/s 106 of TP Act was served;
- (4) rent was always tendered on behalf of all four brothers and not individually on behalf of any of them.

Therefore, the only question for consideration remains whether it was a composite tenancy in favor of all the four defendants or there were four separate tenancies.

6. Admittedly, the lease commenced on 1.10.77 in this case." A rent note dated 4.9.77 was executed between the parties. In this document plaintiff/petitioner has been described as a Lesser and the defendants/respondents who are sons of late Shri Devi Das Mehra, have collectively been described as lessee. The demised premises has been described as showroom on Western side on the ground floor with the entire loft on the Veranda of the commercial building E-1 & E-2, (facing ring road) in the South Extension Part II, New Delhi known as Mahajan House measuring 1200 sq. ft. The rent has been mentioned as Rs. 2500/-. There is no division of the demised premises or rent to be paid by the four brothers individually. Therefore, the question of creation of four separate tenancies does not arise. It is not the case of the defendants that either of them

ever paid rent to the landlady individually. It may be that they had been making individual contribution towards rent paid to the landlord in lumpsum. But this is their mutual adjustment. Qua the landlord the tenancy of the defendants was one composite tenancy. It appears that vide a cheque dated 19.8.92 for Rs. 42,500/- some arrears of rent were tendered to the petitioner landlady for the period 1.4.91 to 31.8.92. This cheque was signed by only one person Yashpal Mehra. Landlady refused to accept it and in this connection she wrote a letter dated 17.9.92 clearly stating in para 3 that Yashpal Mehra is only one of the tenants and he is not the only tenant. From this letter defendants/respondents have sought to raise the plea that there are four separate tenancies. This is not the tenor of the plaintiff's letter. All that she stated in the said letter was that four brothers were tenants which is clear from the rent note also. Therefore, tender of the cheque by only one brother is not acceptable. A subsequent cheque for Rs. 60,000/- as rent for the period from 1.4.91 to 31.5.93 was accepted by the landlady vide receipt dated 24.5.93 as the same was tendered on behalf of all the four brothers. This does not tantamount to creation of four separate tenancies. Not a single receipt has been placed on record to show that they paid the rent individually to the landlady. As already stated, there was no division or bifurcation of the demised premises which always remained in common occupation and enjoyment of the defendants. From the landlady's side, there was no division/ bifurcation of the amount of the rent payable by defendants. The defendants may have agreed within themselves to contribute equally towards rental but such an understanding between the defendants inter se would not have the effect of creating separate tenancies. In the case of *Badri Narain Jha and Ors. v. Rameshwar Dayal Singh and Ors.* SCR PAGE 153 it was held by Supreme Court that a partition amongst the leases does not in any way affect the integrity of the tenancy or makes each holder of interest in it a separate holder of a different tenancy. The apex Court observed that notwithstanding such partition the lessees remain liable qua Lesser for the payment of the whole rent as one tenancy. In the case of *Ashok Chintaman Juker and Others Vs. Kishore Pandurang Mantri and Another*, , where after the death of original tenant there was no partition of the tenement and the member of family were paying rent through one of them it was held that tenancy was joint and notice to one was held to be sufficient to determine the tenancy. Decree passed on the basis of compromise between landlord and the member through whom rent was paid was held to be valid and executable against other members of the family. The admitted facts in the present case clearly show that there has always been unity of title and possession amongst the defendants as regards the lease and rental paid to the landlord. Therefore, the question of there being separate tenancies does not arise.

7. In this case, the petitioner/landlady has taken the precaution to serve notices u/s 106, TP Act on each of respondents individually. Therefore, tenancy stands validly terminated. No dispute was raised as to the rate of rent increased from time-to-time as also regarding rent due for the months of September-October

2001. Thus all relevant facts stand admitted. Petitioner is, Therefore, entitled to decree on the basis of admission of relevant facts under Order 12 Rule 6, CPC. Defendants' plea that there were four separate tenancies was based on their own interpretation which is totally misplaced. No evidence was required to decide the question. Facts admitted between the parties which have already been noticed were sufficient to repel the defendants' contention.

8. In the result this revision is accepted and the impugned order dated 3.2.2004 is hereby set aside. A decree for possession in respect of premises No. E-1 & E-2, South Extension, Part II, New Delhi, shown in red colour in the site plan and for recovery of arrears of rent amounting to Rs. 7318/- for the months of September-October, 2001 is hereby passed against the defendants with costs. As regards damages/mesne profit for occupation from 1.11.2001 till the date of eviction, learned trial Court will held inquiry under Order 20, CPC and pass appropriate orders.

9. Accordingly, parties are directed to appear before learned trial Court on 15th September, 2004.