

(2001) 10 DEL CK 0064

In the Delhi High Court

Case No : I.A. 9620 and 9622 of 2000 in Suit No's. 2667 and 2668/99

Sneh Vasih and Another

APPELLANT

Vs

Filatex India Ltd.
 Sneh Vasih and Another Vs
Purshotam Bhargava

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 12 Rule 6(1)
Transfer of Property Act, 1882 — Section 106, 107, 53A

Citation : (2002) 95 DLT 373

Hon'ble Judges : Vinod Sagar Aggarwal, J

Bench : Single Bench

Advocate : Arun Khosla, for the Appellant; Ravinder Sethi Sanjay Gupta and Varsha Kriplani, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Aggarwal, J.—Smt. Sneh Vaish and another have fled a suit for ejectment, recovery of rent an mesne profits against M/s Filatex India Ltd. (hereinafter described as the respondent). The sum and substance of the pleadings which give rise to the filing of the said suit is that on 1.10.1993, the suit premises were let to the defendant/respondent for three years. Lease was executed. But defendant started paying 20% increased rent. Thereafter the plaintiffs vide a notice of 25th October, 1999 had terminated the contractual lease with effect from 30th November, 1999. Since the premises as such had not be vacated the suit as such referred to above has been filed.

2. In the written statement the defendant had contested the suit. Defendant's plea is that he is in legal possession of the suit premises in part performance of the agreement which is containing in the registered lease deed of 21st October, 1993 executed between the parties which was provided and agreed between the parties that defendant shall have the right to renew the lease deed on the expiry of each term of the lease and in case the defendant so opts to renew the lease

then rent would be increased by 20%. It was also provided in Clause 4(b) of the lease agreement that plaintiffs will not, at any time object to the renewal of the lease of the demised premises and that option to renew the lease is inexhaustible. plaintiffs cannot determine the lease till the rent at the increased rate of 20% for successive term is paid. In pursuance of Clause 4(b) of the lease deed when first three years were to expire defendant vide registered letter of 25th June 1996 gave a notice to the plaintiff that they are opting for renewal of lease deed for another three years and that they shall be paying the increased rent by 20% from 1st October, 1996. plaintiffs were further informed that defendants are willing to bear the cost of registration of the lease. The defendant had finally on 2nd September, 1996 informed the plaintiffs that they will be renewing the lease from 1st October, 1996. The rent was paid after increasing the earlier rent by 20% and plaintiffs were informed that they should encash the cheque only if they were willing to fulfill their part of the obligation. The said cheques were encashed. The plaintiffs verbally conveyed to the defendant that they shall be sending the final lease deed. The defendant continued to be possession in part performance of the contract. The defendant again vide letter of 5th July, 1999 informed the plaintiff of their intention to renew lease deed from 1st October, 1999 and that the defendant shall be paying 20% increased rent. The defendant had conveyed the intention to the plaintiffs for renewal of the lease and had sent the cheque accordingly with the increased rent. On receipt of the cheque the plaintiffs for the first time informed that they were not agreeable for renewal of the lease agreement. The plaintiff had sent a notice terminating the tenancy of the defendant from 30th November, 1999. The plaintiffs are stated to be with a mala fide intention claiming possession to coerce the defendant to increase the rent. The defendant filed a suit for specific performance of the contract. The said suit is stated to be pending.

3. The plaintiffs preferred an application under Order 12 Rule 6 CPC (IA 9622/2000) asserting that it is an admitted case of the parties that after 30th September, 1996 when the lease came to an end with efflux of time no new lease deed was executed or registered as required by Section 107 of the Transfer of Property Act. The contractual tenancy of the defendant had been terminated vide a valid notice and since there is no other registered deed that was executed the plaintiff is entitled to a decree for possession on basis of the admitted facts.

4. The said application as such has been contested. The plea offered were basically the same as had been taken in the written statement which requires no repetition. By virtue of the present order the said is proposed to be disposed of. A similar suit (Suit No. 2668/99) had been filed with identical prayer and facts though it pertained to a separate portion of the premises. Therein also similar defense had been offered and an application under Order 12 Rule 6 CPC (IA 9620/2000) has been filed. Since the question involved is identical the present order would govern the application pending in the connected suit.

5. Order 12 Rule 6 of the CPC reads:

6. Judgment on admissions - (1) Where admissions of facts 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 part 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.

6. Perusal of the relevant extract of Order 12 Rule 6 reproduced above clearly show that there has to be an admission of fact made in pleadings or otherwise and if such admissions have been made the court at any stage may pronounce a judgment in that regard. This clearly reveals that firstly admissions have to be of facts. Admission must be clear and unambiguous. No admission are required obviously with respect to questions of law which can always be gone into. And second important aspect of Order 12 Rule 6 CPC is that it is not mandatory for the court to act and pass a judgment because facts and circumstances of each case have to be taken note of. These principles are well recognised and reference can well be made with advantage to the decision of this court in the case of Madhav Leasing Finance (P) Ltd. and Another Vs. Erore Educational Infotech Pvt. Ltd., . In the cited case there was a registered lease agreement. After the expiry of the period of lease civil suit was filed against the tenant for handing over the possession. The defendant had taken the plea that the lease deed as well as the hire agreement were orally renewed for a further period of two years. The said fact was again controverted by the plaintiff in that case. This court held that under Order 12 Rule 6 a decree can only be passed where admissions are clear and unambiguous and once it was not so in the peculiar facts of that case this court did not deem it appropriate to pronounce the judgment qua the possession of the premises.

7. The Supreme Court in the case of Bharat Taneja and Anr. v. Sunil Madan and Anr. 1999 SCC 396 had also dealt with the scope of Order 12 Rule 6 CPC. The Supreme Court also held that admission must be clear and unambiguous and in paragraph 23 the scope of Order 12 Rule 6 was explained to be:

"Under this rule, the court can, at an interlocutory state of the proceedings, pass a judgment on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers the court to pass judgment and decree in respect of admitted claims pending adjudication of the disputed claims in the suit."

8. In the present case in hand it is admitted that there was registered lease agreement between the parties. It was for three years. It came to an end with efflux of time in 1996. Thereafter no registered lease agreement was executed.

It is also not in dispute that the plaintiffs had sent a notice terminating the contractual tenancy of the defendant in the year 1999 and thereafter had preferred the present suit. The rent admittedly is more than Rs. 3500/- per month and Therefore the provisions of Delhi Rent Control Act are not applicable to the premises in question.

9. The first and foremost question in that view of the matter that comes up for consideration is as to whether a subsequent lease was required to be executed in writing or not.

10. The agreement in writing between the parties is of 21st October, 1993. It stipulates that the lease is to be for a period of three years. The lease was to come to an end on 30th November, 1996. The other clauses of the lease are not relevant but Clause 4(b) of the said lease agreement which is being relied upon on behalf of the defendant reads as under:-

"On the expiry of the lease period Lessee shall have the exclusive right or option of renewal of lease for the further period of three years and the Lessee shall be entitled to renewal of lease on the same terms and conditions after the expiry of the lease period herein mentioned i.e. for same term except that renewal of the lease will be with increment of 20% rent for every successive renewed term. Lesser will not at any time object to the renewal of the lease of the demised premises. The option to renew the lease by the Lessee herein provided in inexhaustible (except that there shall be increment rent for the fresh period or term). Indeed Lessers would be disentitled to recover the possession where renewal notice has either been sent late or not sent at all by the Lessee except that on each renewed term Lessers would be entitled to increment in rent as provided herein. The Lesser cannot, Therefore, determine the lease at any time so long as the rent is being paid at the rate mentioned now or with the incremental rate at the rate of 20% for every successive term. It shall however be open to the Lessee to determine the lease at any time by giving a notice in writing 30 days before the handing-over of possession. Notice hereunder shall be deemed sufficiently served on Lesser, if addressed to them and left at or sent by post to their addresses mentioned in this document unless a change of address is duly registered by the Lessers with the Lessee and the notice sent by post shall be deemed to be given at the time or in due course of the post to be delivered at the address to which it is sent."

11. This relevant clause clearly gives an option to the defendant to renew the lease after the expiry of the lease period subject to increase of rent of 20% for every successive renewal. The plaintiff/landlord had no right to object in this regard. This option with the defendant was inexhaustible. It had further been provided that lesser would not be entitled to recover the possession where renewal notice had been sent. The lesser was not entitled to determine the lease at any time so long as rent is paid at the rate mentioned above. It was only on determination of the lease subject to Clause 4(b) that defendant was to hand over vacant possession of the premises to the plaintiff.

12. Admittedly, in the present case after efflux of time, namely of 30th September, 1996 no written deed was executed much less registered. Learned counsel for the plaintiff highlighted that in the absence of the subsequent lease being registered the defendant became a monthly tenant and that the monthly tenancy had since been determined. Reliance in this regard had been placed on the decision of the Madras High Court in the case of Rasiklal M. Mehta and Another Vs. The Hindustan Photo Films Manufacturing Company Ltd., In the cited case there was a lease deed executed which was for more than a year. There was an option clause for renewal of the lease as in the present case. It was held that renewal of lease could only be made by a registered instrument and that the requirement of law must be satisfied. The findings of the court were:

"Thus, it will be clear that once a tenant or Lesser exercises his option for renewal of an existing tenancy for a further period, what comes into existence is a fresh tenancy in replacement of the old tenancy, and such tenancy will have to satisfy the requirements of the law regarding the making of the tenancy. I have already extracted the provisions of Section 107 of the Transfer of Property Act. The provisions contained therein make it absolutely clear that it is the policy of the law that a lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument and not otherwise."

13. In the subsequent decision from the same court in the case of Bharat Petroleum Corporation Ltd. Vs. V. Ashvinraj, the same view was reiterated that when there is a failure to get the lease deed duly executed and registered in that event the landlord will have the right to seek possession. In other words, it was reiterated that the subsequent lease required registration.

14. In this regard a few decisions from this court can also be taken note of. A Division bench of this court in the case of Uptron Powertronics Ltd. Vs. Shri G.L. Rawal, was concerned with a similar question. One of the question for consideration before the Division Bench was as to whether the fresh lease was required to be registered or not. The answer was that fresh lease must be registered otherwise the tenancy would be deemed to be a month to month tenancy. In paragraph 26 this court held:

"The next question that arises is whether a fresh lease deed or an extension/renewal of the earlier lease deed is required to be through a registered instrument there is no dispute that the lease was intended for a block of three years at a time. As a result, the parties entered into an the parties in 1990, 1993 and eventually in 1996. Paragraph 1 of Section 107 of the Act makes it very clear that a lease of immovable property exceeding one year can only be made by a registered instrument. Admittedly, in the present case part form the lease deed entered into between the parties on 17th July, 1984 no registered instrument was drawn up by the parties. It is, therefore quite clear that in the absence of a registered instrument, the necessary consequence will flow, this means that the tenancy was only on a month to month basis. Consequently, the respondent

could terminate the tenancy by a notice u/s 106 of the Act, which in fact, he did by issuing a notice dated 2nd April, 1997 followed by another notice dated 5th November, 1997. The appellant has not denied receipt of the latter notice."

15. More recently a Division Bench of this court in the case of ITDC Ltd. v. Chander Pal Sood & Son 2001 I AD 353 in almost similar circumstances where earlier lease was executed for three years and subsequently no fresh lease deed was executed this court concluded that lease could be terminated by 15 days notice. In paragraph 21 this court recorded the findings as under:

"In this case admittedly Lease agreement was entered between the parties on 1.5.94. Lease was for a period of 3 years at a monthly rent of Rs. 5000/-. What was pleaded in the written statement was that the rent was agreed to be increased @ 10% after every three years; Further admittedly, no fresh lease was executed after the expiry of the said lease. Therefore lease has to be construed as a lease on month to month basis. The same could thus be validly terminated by giving 15 days notice. The plea of the appellant that the plaintiff was estopped from terminating the tenancy cannot be sustained as there cannot be any estoppel against the Status."

16. The Supreme Court in the decision rendered in the case of Biswabani Pvt. Ltd. Vs. Santosh Kumar Dutta and Others, where the tenant continued to be in possession as tenant also recorded the finding that though the second lease had never come into existence for want of registration but the tenant would continue to be taken to be so in possession of the premises. The findings as were recorded also by this court were identical and the Supreme Court observed:

".....The second lease never came into existence for want of registration and more particularly the appellant was not put in possession under the purported second lease which turns out to be void. The paradoxical approach manifested in the approach is that if a valid lease had come into existence on the expiry of it the appellant tenant would have continued in possession under the protection of the relevant Rent Restriction Act....."

17. It is abundantly clear from aforesaid that when there is an earlier lease which came to an end with efflux of time for the continuation of the lease for a specified period of time of 1 year or more as the case may be a fresh registered document would be required to be executed otherwise the defendant would be taken to be a tenant on month to month basis.

18. On behalf of the defendant strong reliance was placed on the decision of this court in the case of Baljit Kaur v. United Insurance Company Ltd. 1997 VI AD (Delhi) 937. This court concluded that though order 12 Rule 6 of the CPC is couched in a wide term but it is not intended to be put into operation where there are serious questions of law and fact involved. But at the outset it can well be stated that in those cases the court had come to the conclusion that there were no clear and unambiguous admissions. Keeping in view the said fact the decision rendered above would be confined to its peculiar facts. For the same

reason the decision in the case of Mohan Prasad Jha Vs. Shri Shambhu Prasad Singh, would not come to the rescue of the defendant. Herein also it was also on the facts of that particular case that this court had come to the conclusion that there were no clear and unambiguous admission and did not pass any judgment on basis of the admissions. In that view of the matter necessarily the facts of each case has to take the front seat and have to be taken care of.

19. In this backdrop one can refer conveniently to the Division Bench decision of this court in the case of Singer India Ltd. Vs. Amita Gupta, . In the cited case the defendant was a tenant of the plaintiff. The plaintiff by means of notice had terminated contractual tenancy. The defendant did not vacate the premises on the ground that the tenancy of the defendant stood renewed every three years on escalation of rent by 15% without having any registered deed in his favor. This court considered the import of Section 53A of the Transfer of Property Act, namely the doctrine of part of performance and concluded that the tenant will not be in a position to take advantage of the said principle. It was held:

"10. No doubt the possession is already with the lessess, i.e. appellant herein and he wants protection thereof. The protection would be available to him only to the extent that he can justify his possession, i.e. he is not a trespasser. Section 53-A will not enable him to press into service terms of a document which is unregistered though required by law to be registered. Allowing the appellant to enforce the terms of an unregistered lease would be illegal Section 53A when used as a shield will at best enable the appellant to show that his possession is that of a tenant and not that of an unauthorised occupant or trespasser. It cannot take him any further. For going further, i.e., to show that he is a tenant in perpetuity, the tenant has to invoke a term of the lease deed which on account of being part of an unregistered document cannot be looked into. Section 53-A can at best make him a tenant from month to month and nothing more. This can be the only harmonious construction of the provisions of Section 53-A and 107 of the TP Act. A lease from month to month will survive so long as notice u/s 106 of the TP Act terminating the lease is not served. Extending protection for another period of three years means creation of thee years lease which under the law can be only through a registered lease deed. You cannot do that indirectly what you cannot do directly. The appellant cannot be permitted to invoke terms of an unregistered lease by invoking Section 53-A of the TP Act.

20. Indeed the fact of the cited case are very close to the facts of the present case. But the obvious question would be as to whether keeping in view Order 12 Rule 6 at this sage it would be appropriate to pass a judgment in that regard again. In the peculiar facts this court finds that this discretion should not be exercised in favor of the plaintiffs. Reasons are obvious. As has been seen from the perusal of Clause 4(b) of the lease agreement the lease deed was for a period of three years. The tenant/defendant were given the right to exercise the option for renewal of the lese. But the important aspect is that the plaintiffs were dis-entitled to recover possession as per the said agreement where the renewal

notice has either been sent coupled with the increase in rent. As agreed and referred to above an embargo further has been placed on the plaintiff that lease will continue when notice in this regard is given & so long as rent is being paid at the rate mentioned with increase of 20% for every successive term. Keeping in view this clause at this stage it cannot be taken that once the defendant as is alleged by the defendant could be taken to have become a trespasser after the notice is alleged to have been served. The defendant contends that they had served the necessary notice of renewal of the lease and further are willing to pay 20% increase in the rent. At this stage it cannot Therefore be concluded that here was any clear or unambiguous admission to prompt this court to stage that lease had been determined and Therefore on determination of the contractual tenancy plaintiff would be entitled to recover the possession. In face of the aforesaid it become unnecessary to go into the ratio decidendi of the decision of the Supreme Court in the case of Sheth Maneklal Mansukhbhai Vs. Hormusji Jamshedji Ginwalla and Sons,

21. For these reasons the applications under Order 12 Rule 6 and are dismissed.
22. Before drawing the curtain it must be stated that nothing stated herein should be taken as any expression of opinion on merits of the matter.
23. List is for framing of issues on 5th March, 2002.