

(1998) 01 DEL CK 0060

In the Delhi High Court

Case No : IAs 7063 and 11509/96 and 1036/97 in Suit No. 846 of 1990

Vikas Theatres and Exhibitors

APPELLANT

Vs

Punjab and Sind Bank

RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

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

Citation : (1998) 71 DLT 526 : (1998) 44 DRJ 198 : (1999) 1 RCR(Civil) 26 : (1998) 2 RCR(Rent) 602

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Harish Malhotra and Ashwani Sood, for the Appellant; N.S. Sistani and Ajit Singh, for the Respondent

Judgement

Vijender Jain, J.—This order will dispose of is No. 11509/96, application under Order 7 Rule 11 CPC filed by the defendant for rejection of the plaint as well as is No. 1036/97 u/s 11 CPC filed by the plaintiff. Mr. Sistani, learned counsel appearing for the defendant has contended that the suit is misconceived as well as pre-mature as no agreement as alleged in the plaint was entered into by the defendant with the plaintiff. He has further contended that the suit which has been filed on the basis of agreement does not exist, the relief of possession sought for cannot be granted by this Court. The next submission of the learned counsel for the defendant is that the plaintiff has not claimed possession in the suit. Lastly Mr. Sistani has contended that no cause of action accrued in favor of the plaintiff at the time of filing of the suit. Mr. Sistani has further contended that in view of the decision of this Court in Baljit Kaur v. United Insurance Company Ltd. 1997 6 AD 937, judgment for possession be not passed by this Court as there are disputed question of law and fact.

2. The defendant filed the written statement and in para 1 there is an unequivocal averment made by the defendant that the lease was to expire on 9th February, 1997. Conscious of this fact, the defendant made statement before this

Court on 4th February, 1997 that the lease was to expire on 9th February, 1997 and thereafter the plaintiff was entitled to the possession of the property in dispute. The matter was adjourned to 6th March, 1997. On 6th March, 1997 I.As 7063/96 and 11509/96 came up for hearing before the Court. It seems that on query, from the Court that in view of the stand of the defendant that the lease was to expire on 9th February, 1997 how can the defendant continue in possession, thereafter the defendant sought time to examine the matter as to how defendant can still continue with the possession of the premises in dispute.

3. Vide order dated 6th March, 1997 the Court on the arguments of the learned counsel for the defendant regarding issue No. 4 which was framed on 8th April, 1994, "Whether the plaintiffs are entitled to the specific performance of the agreement dated 25th July, 1986" has ordered that the issue was framed regarding the merit of the case but in view of the fact that defendant himself admits in para 1 in its written statement that the lease between the parties expires on 9th February, 1997, said issue has lost its relevance in view of the application of the plaintiff under Order 12 Rule 6 based on the defendant's admission in paragraph 1 of the written statement. As a matter of fact the objection of the learned counsel for the defendant as contained in is No. 11509/96 was disposed of by order of the Court and application of the plaintiff under Order 12 Rule 6 was listed for further orders on 24th March 1997. Thereafter the matter was adjourned and on 21st July, 1997 when the matter was listed in Court, counsel for the defendant sought time to find out as to whether the matter could be settled between the parties. Again on 17th September, 1997 the statement was made by the counsel appearing for the defendant that Mr. Ajit Singh had talked with one of the Directors of the plaintiff company and some more time may be given to finalise the matter between the parties and that is why the matter was adjourned to 30th September, 1997. Again at the request of the counsel for the defendant, the matter was adjourned from 30th September, 1997 to 3rd November, 1997 to settle the matter. In the meanwhile another is No. 10452/97 and is No. 10603/97 were filed for adjourning the suit sine die. These I.As were disposed of by the Court by its order dated 26th November, 1997.

4. It is in this background taking into consideration the admission of the defendant in paragraph 1 of the written statement, the application under Order 12 Rule 6 has been filed by the plaintiff. Although Mr. Malhotra learned counsel appearing for the plaintiff has contended that in paragraph 26 of the plaint he has mentioned that a notice u/s 106 of the Transfer of Property Act was served on the defendant independent of the agreement which was filed and has been disputed by the defendant. He has also argued that in paragraph 27 of the plaint, the basis of the suit is not only the agreement but termination of tenancy of the defendant pursuant to the notice served as mentioned in paragraph 26 of the plaint. Mr. Malhotra has contended that a separate cause of action distinct and different, not based on the agreement accrued in favor of plaintiff.

5. I have given my careful consideration to the arguments advanced by the learned counsel for the parties. There cannot be any dispute with the proposition of law that in a case where the facts are not admitted or different questions of facts and law arise for consideration, decree of possession may not be passed. To that extent, there cannot be two opinions in so far as Baljit Kaur's case (supra) is concerned. Relief under Order 12 Rule 6 CPC is a discretionary relief depending upon the facts and circumstances of each case. However in the case before me, where the defendant himself admits in the written statement taking into consideration all the averments in the plaint that the lease shall expire on 9th February, 1997 and that stand was taken by the defendant on 16th April, 1991 when the written statement was filed. How long the Court will allow the defendant to be in possession after clear and unequivocal statement made by defendant on its free will and accord? This Court need not go into such questions which are frivolous in nature and are made only to delay the decision.

6. Look the plight of a plaintiff. Even in view of the specific statement/averment made in the written statement as early as in 1991 that the lease shall expire in February, 1997, the plaintiff is denied the right of possession now on the ground that the relief for possession was not prayed in the suit or the suit was filed on the basis of an agreement which was not in existence. The defendant cannot be allowed to reprobate and approbate. This will amount to blowing hot and cold simultaneously. It is all the more alarming to see these kinds of objections coming from bank, public sector undertaking or the Government Department. Least the Court expect from the defendant which is a Bank is to have some commitment to their own written statement and ought not to have shifted stands in the matter in hand. The whole attributed of the defendant in this regard amounts to dilatory tactics. I find no merit in the arguments of the learned counsel for the defendant that at the time of filing the suit there was no agreement between the parties or that the suit was misconceived or premature. If during the pendency of the suit an admission comes from the defendant the Court can take the same into consideration. Parties cannot be permitted to resile from that admission, otherwise whole system of judicial administration will be a mockery in the conditions prevalent today where the justice system is overburdened.

7. In *S.L. Associates Pvt. Ltd. Vs. Karnataka Handloom Development*, in somewhat similar circumstances this Court held:

Even assuming in favor of the plaintiff that the lease was to be further extended for a period of three years without the consent of the plaintiff as per the terms of the said agreement. That period of three years has also now come to an end during the pendency of the suit. No doubt, a suit must be practical in all stages on the cause of action as it existed on its date of commencement. But the Court may however in suitable cases take notice of the events which have happened since the institution of the suit and afford relief to the parties on the basis of altered conditions. This must be done by the Court by giving relief to the parties

on the basis of altered circumstances in order to shorten litigation and get complete justice between the parties. As the defendant has entered into the possession on account of lease deed and such a period of lease deed is offered during the pendency of the suit by giving the interpretation of the terms of the agreement in favor of the defendant. The plaintiff is entitled to get a relief of eviction under the provisions of Rule 6 of Order 12 CPC. The facts of the case before me are exactly similar with the facts of the case before the Division Bench of the Madhya Pradesh High Court in the case of Shikharchand and Others Vs. Mst. Bari Bai and Others, and in that case also a decree for eviction was passed in favor of the plaintiff under the provisions of Rule 6 Order 16 of CPC that would be quite clear from the following head note of the said case:

"Where in a suit for eviction after the expiry of a lease on the defense being taken that under a compromise the term of the lease was extended by 10 years the plaintiff made an application (without admitting the agreement) that even under Order 12 Rule 6 since the extended term had also expired, it was open to the Court to base a judgment under Order 12 Rule 6 against the defendant on the basis of his own admissions because it is clear from the case as set up by him that he was not entitled to continue in possession of any case after the expiry of the fresh term of 10 years.

The words "otherwise" in Order 12 Rule 6 clearly indicates that it is open to the Court to base the judgment on statements made by a party not only in the pleadings but also de hors the pleadings. Such admissions may be made either expressly or constructively.

It is no doubt true that ordinarily the plaintiff is entitled to a relief only on the basis of the cause of action stated in the plaint but it is open to the Court in suitable cases to afford a relief on the basis of the case as set up by the defendant. In such a case there is no prejudice to the defendant because the relief legitimately springs from the case as set up by him."

8. In spite of admission by the defendant, the defendant was not prepared to vacate the premises even in 1997 or today. Another objection was taken by the defendant with regard to some letter which has been received from some other co-owner of the property in question which objection has been disposed of by this Court by its order dated 26th November, 1997. Pursuant to the notice issued to the other co-owner Mr. Makhija has put in appearance.

9. The Division Bench of this Court in 1997 II Apex Decision (Delhi) 518 in Surjit Sachdev v. Kazakhstan Investment Services Pvt. Ltd. while dealing with Order 12 Rule 6 CPC held that after lease came to an end the defendants had no right to continue in possession. In para 17 of the said judgment the Court ordered as under:

"The question now is that whether there is any admission or not so as to entitle the plaintiff to have a decree for possession. The factors which deserve to be taken into consideration in order to enable the Court to pass a decree in plaintiffs

favor as regards possession of the suit property by defendant as a tenancy; and (b) determination of such relation in any of the contingency as envisaged in Section 111 of the Transfer of Property Act. One of the modes stated therein is by efflux of time limited by the lease. Only on unequivocal admission of the above two factors will entitle the plaintiff to a decree on admission. Admission need not be made expressly in the pleadings. Even on constructive admissions Court can proceed to pass a decree in plaintiffs favour."

10. From the admission made in para 1 of the written statement, I hold that it was an unequivocal admission by the defendant which entitles the plaintiff to have a decree for possession. In the circumstances, I pass a decree of possession against the defendant and allow the application of the plaintiff under Order 12 Rule 6. Let the possession be handed over by the defendant to the plaintiff within four weeks. At the time of handing over the possession, the defendant will give notice to the other co-owner of the property Shri Rakesh Khanna who may also be present at the time of handing over the possession of property No. H-11 Middle Circle (basement) Connaught Circus, New Delhi to the plaintiff.

11. Application Nos. 7065/96, 11509/96 and 1036/97 are disposed of accordingly. Suit No. 846/90

12. List this matter for further proceedings on 2nd March, 1998.