

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROEDURE

Date of Judgment: 24.12.2010

R.S.A.No.235/2010 & C.M.Nos.23265-23266/2010

SHASHI SHARMAAppellant
Through: Mr.Saurabh Sharma, Advocate.

Versus

BIMLA YADAVRespondent
Through: Nemo.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)
C.M.23266/2010 (for exemption)
Exemption allowed subject to all just exceptions.
Application is disposed of.
R.S.A.No.235/2010 & C.M.23265/2010 (for stay)

1. This second appeal has impugned the judgment dated 2.11.2010 which had endorsed the finding of the trial judge dated 1.7.2010 whereby the suit of the plaintiff seeking possession of the suit property i.e. premises/shop bearing no.2-A, Ground Floor situated Yadav Complex, Opposite Dada Dev Mandir, Main Road, Palam Vilalge, Dev Kunj, New Delhi had been decreed on an application under Order 12 Rule 6 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

2. The trial judge had held that there were clear and unambiguous admissions made by the defendant in his written statement which entitled the plaintiff to a decree under Order 12 Rule 6 of the Code. This finding was confirmed by the Appellate judge.

3. Before this court it has been urged that the defendant had not made any unambiguous admission. Attention has been drawn to the written statement. It is pointed out that the defendant had in fact disputed that

there was any written agreement between the parties. His contention was that the rate of rent was `1400/- per month exclusive of electricity charges which was `100/- per month.

4. The finding in the impugned judgment qua this proposition vide decreeing the suit of the plaintiff reads as follows:

“A perusal of the written statement filed by the defendant would reveal that she has admitted that the plaintiff-respondent is the owner and land lady of the suit property. As regards the factum of tenancy, although the defendant denied the execution of the agreement dated 07.07.2006 and the rate of rent of Rs.4000/- in Para 2 of the written statement (on merits) she pleaded that she was orally inducted as tenant in the suit property. Further, according to her she was so inducted since January 2004 at monthly rent of Rs.1,400/- and Rs.100/- per month towards electricity charges.

So far as factum of termination of tenancy is concerned in Para 6 (on merits) of the written statement, the defendant pleaded that the contents of the notice dated 19.12.2006 are the matter of record and not denied but added that plaintiff had no reason to serve her with this notice dated 19.12.2006.

A perusal of notice of 19.12.2006 would reveal that thereby the plaintiff terminated the tenancy of the defendant expressing therein that he did not wish to keep her as a tenant any more, after mid night of 06.01.2007 and 07.01.2007, on the date of completion of the tenancy by efflux of time and thereby she was called upon to hand over the vacant and peaceful possession of the terminated premises. The plaintiff further specified in the notice that the same be also treated as statutory notice under Section 106 of Transfer of Property Act.

Since the defendant has admitted factum of relationship as landlord & tenant, receipt of notice dated 19.12.2006 and pleaded oral tenancy, it cannot be said that the plaintiff had no right to terminate the tenancy. In the course of arguments, Learned Counsel for the appellant has not been able to point out as to what would have been correct manner to be adopted by the defendant for termination of tenancy. In the given facts and circumstances, the authority cited by Learned Counsel for appellant does not come to aid of the appellant as it was a case based on lease deed.

In the course of arguments, Learned Counsel for the appellant has admitted that the provisions of Delhi Rent Control are not applicable to the present case on the ground that there is no notification under the Act for the area where the suit property is situated.

In view of the above discussion, this Court finds that trial court has rightly passed decree for possession in favour of the plaintiff on the admissions made by the defendant in the pleadings.”

5. Admittedly, the relationship of landlord-tenant stands admitted between the parties. There is no dispute to this proposition. Provisions of Section 116 of the Indian Evidence Act are also attracted. Legal notice dated 19.12.2006 terminating the tenancy of the defendant with effect from 6.1.2007 was received by the defendant to which a reply had also been filed. The said reply has been perused; in this reply also the only contention raised was that there was no written rent agreement entered into between the parties; the defendant had been inducted in the suit premises on the basis of an oral tenancy and the rate of rent was `1500/- which was inclusive of electricity charges. There was no dispute to the legal requirements of the notice which was a notice under Section 106 of the Transfer of Property Act. Even otherwise, the perusal of the document shows that it had fulfilled the twin requirements. The tenancy had been determined on the last day of the tenancy month giving a clear 15 day period to vacate the suit property as also by efflux of time.

6. The contention of the defendant that there was an oral rent agreement between the parties and rental was `1500/- would not make even otherwise make this a triable issue as admittedly the Delhi Rent Control Act is not applicable to the area where the suit premises is located. The question of applicability of the said Act would not arise; in these circumstances, the rate of rent becomes irrelevant.

7. It was a monthly tenancy between the parties. It was validly terminated by a legal notice. The necessary consequence was that a decree had to follow under Order 12 Rule 6 of the Code. There is no fault in this finding.

8. Learned counsel for the appellant has placed reliance upon a judgment of the Apex Court reported in AIR 2010 SC 1890 M/s. Jeevan Diesels & Electricals Ltd. vs. M/s. Jasbir Singh Chadha (HUF) & Anr. This judgment is clearly distinct on facts. In this case, in the written statement the defendant had disputed the fact of the expiry of the tenancy by efflux of time as also about the determination of the tenancy. There is no such contention raised in this appeal. Appeal as also the pending application is dismissed in limine.

Sd/-
INDERMEET KAUR, J.