IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : CODE OF CIVIL PROCEDURE

IA 12809/2012 (by plaintiff u/O XII R 6 CPC) in CS(OS) 594/2012

Reserved on: 30th July, 2013

Decided on: 22nd August, 2013

ASHA NARANG SPAAK & ANR ..... Plaintiffs
Through Mr. Ravi Sikri, Mr. P.K. Sharma, Mr. Sagari Dhanda, Advs.

versus

M/S HAFCO BRASS USA ..... Defendants
Through Mr. J.C. Mahindro, Adv. with defendant No.2 in person.

Coram:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. The plaintiffs have filed the present suit, inter alia, praying for a decree of possession of ground floor of A-27, Nizamuddin West, New Delhi with mesne profit with effect from 1st January, 2012 till the actual physical possession of the premises is delivered along with the costs.

2. By way of present application the plaintiffs pray for passing of a preliminary decree of possession of the demised premises consisting of one dining room, three bed rooms with attached bath rooms, a kitchen, a servant quarter and front lawn from the defendants on the basis of admissions made by the defendants under Order XII Rule 6 CPC.

3. Learned counsel for the plaintiffs contends that the defendants in the written statement have admitted that the premises was given on rent, the suit for recovery of possession is not protected under the provisions of Rent Control Act and the landlord tenant relationship having been severed by notice served by the plaintiffs under Section 106 of the Transfer of Property Act (in short the T.P. Act), the plaintiffs are entitled to a judgment and decree for possession. The pleas of the defendant even if accepted do not affect the entitlement of the plaintiffs for possession of the premises as held

in M/s. Payal Vision Ltd. Vs. Radhika Choudhary 2012 (9) SCALE 105. Reliance is also placed on Punjab National Bank Vs. Sh. Virendra Prakash & Anr. 2012 V AD (DELHI) 373 to contend that existence of relationship of landlord tenant, factum of premises not having protection of Delhi Rent Control Act and the factum that tenancy was terminated by service of legal notice not being disputed in the written statement, the decree is required to be passed in favour of the landlord. Even de-hors the issue of termination of tenancy, if the period of lease expires, the tenant is liable to vacate the premises. Reference is made to Ashwani Bhatia (Sh.) Vs. Sh. Suresh Rastogi & Anr. 2012 IV AD (DELHI) 315.

4. Learned counsel for the defendants on the other hand contends that the defendants have taken three preliminary objections in the written statement and in view thereof it cannot be said that there is an admission and plaintiffs are entitled to a judgment on admission. It is specifically objected in the written statement that a defective notice under Section 106 of the T.P. Act was served, the defendant has spent money on renovation and by oral agreement the parties agreed to a lease for 10 years. Once the defendant disputes the facts, the same cannot be treated as admissions and the suit is required to be tried. Hence the application by the plaintiffs are liable to be dismissed. Reliance is placed on K. Seetharam Vs. B.U. Papamma and Anr. (2001) 4 SCC 322 and Beryl Murzello & Ors. Vs. Ramchandra Bhairo Mane & Ors. 2007 (4) Civil Court Cases 393 (Bombay)(DB) to contend that there should be a clear admission and if the facts are disputed then the suit is liable to be tried.

5. Heard learned counsel for the parties. The case of the plaintiffs in the plaint is that the plaintiffs inducted the defendant No.1 as a tenant in the suit premises vide registered lease deed dated 6th February, 2000 on a monthly rent of Rs. 40,000/- for a period of two years which expired on 31st January, 2002. After the expiry of the period of lease, the defendants continued to occupy the demised premises with mutual understanding on the same terms and conditions as provided in the registered lease deed except increasing the rent. No fresh lease deed was executed and registered after the expiry of initial period of lease provided in the lease dated 6th February, 2000. The rent was increased by mutual consent from Rs. 40,000/- over a period of time to Rs. 1,35,000/- which was the last paid rent exclusive of water, electricity and other charges. The defendants are not entitled to seek protection under Delhi Rent Control Act, 1958. As the plaintiffs were not interested in keeping the defendants as tenants, the tenancy was terminated

vide notice dated 14th December, 2011 and the defendants were called upon to deliver the vacated portion of the demised premises after the expiry of the notice period. The defendants in their reply dated 9th January, 2012 admitted the rate of rent and relationship of landlord and tenant but denied to vacate the demised premises on false and frivolous grounds.

6. The defendants in their written statement have neither denied the final relationship of landlord tenant nor the last rent paid. The case of the defendants is that the defendants spent substantial amount of Rs. 5,00,000/- on getting the property renovated, painted and improved. Further the plaintiffs had agreed for the extension of lease and categorically stated that there was no need to execute a fresh lease. Thus, though the defendants had even got purchased the stamp papers for execution of the fresh lease, however on the assurance of the plaintiffs that they will not get the premises vacated, no further lease deed was entered into. It is further contended that the plaintiffs have burdened the defendants with extra electricity charge. Thus, in nutshell the case of the defendants is that the defendants were orally assured of extension of the period of lease and they had spent money on renovation.

7. It may be noted that no counter claim has been filed by the defendants. After the expiry of lease period on 11th January, 2002, no fresh lease deed was executed. Thus thereafter there is a month to month lease between the parties for the revocation of which a notice dated 14th December, 2011 has already been received by the defendants. Even assuming a further lease of 10 years was extended, the lease period as per the registered lease deed dated 6th February, 2000 expired on 31st January, 2002. Even the subsequent period of 10 years came to an end on 31st January, 2012. The tenancy of the defendant was terminated admittedly vide notice dated 14th December, 2011. Though it is contended that the notice is defective, however it is not explained as to how the notice is defective. Thus, the defendants in view of the admissions made are liable to vacate the premises. Dealing with a similar situation the Hon'ble Supreme Court in M/s. Payal Vision Limited (supra) held:

"6. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the Plaintiff-landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord Under Section 106 of the Transfer of Property Act. So long as these two aspects are

not in dispute the Court can pass a decree in terms of Order XII Rule 6 of the Code of Civil Procedure, which 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.

(2) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn upon in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

7. The above sufficiently empowers the Court trying the suit to deliver judgment based on admissions whenever such admissions are sufficient for the grant of the relief prayed for. Whether or not there was an unequivocal and clear admission on either of the two aspects to which we have referred above and which are relevant to a suit for possession against a tenant is, therefore, the only question that falls for determination in this case and in every other case where the Plaintiff seeks to invoke the powers of the Court under Order XII Rule 6 of the Code of Civil Procedure and prays for passing of the decree on the basis of admission. Having said that we must add that whether or not there is a clear admission upon the two aspects noted above is a matter to be seen in the fact situation prevailing in each case. Admission made on the basis of pleadings in a given case cannot obviously be taken as an admission in a different fact situation. That precisely is the view taken by this Court in Jeevan Diesels & Electricals Ltd. (supra) relied upon by the High Court where this Court has observed:

"Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. The question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in Karam Kapahi (supra) may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation."

8. Coming then to the question whether there is any admission by the tenant-Respondent regarding the existence of the jural relationship of landlord and tenant between the parties, it would be profitable to refer to the averments made by the Plaintiff-Appellant in para 2 of the plaint which is to the following effect:

"That the Plaintiff had agreed to let out the entire property at Khasra No. 857 min. (1-03) Village Tehsil Mehrauli in the NCT of Delhi Gitorani alongwith superstructure including servant quarter and garage of the Defendant to the Defendant for residential requirement at a monthly rent of Rs. 50,000/- (Rupees fifty thousand only) towards the rent for the demised premises exclusive of charges for the electricity appliances, fixtures and fittings for a period of three years commencing on 10th day of October 2001 vide lease agreement dated 10.10.2001."

9. In the written statement filed by her, the Defendant has while asserting that the averments made in para 2 above are vague, false and wrong asserted that the property in question was not let out for residential purposes as alleged by the tenant but was constructed for commercial use and let out for that purpose only. The execution of the lease deed dated 10th October, 2001 to which the Plaintiff made a reference in para 2 of the plaint is also not denied. Although the Defendant appears to be suggesting some collateral agreement also to have been orally entered into by the parties, the relevant portion of the written statement dealing with these aspects may at this stage be extracted:

"………..It is further denied that property was let out for residential purposes. As submitted in preceding paras the said property was constructed for use of commercial purposes and was let out for commercial purposes at commercial rent. Execution of Lease Deed is though not denied but is vehemently submitted that the said document was entered upon on the asking of the Plaintiff whereas the terms were different than those incorporated in the lease deed."

10. When placed in juxtaposition the averments made in the plaint and the written statement clearly spell out an admission by the Defendant that lease agreement dated 10th October 2001 was indeed executed between the parties. It is also evident that the monthly rent was settled at Rs. 50,000/- which fact too is clearly admitted by the Defendant although according to the Defendant, the said amount represented rent for commercial use of the premises and not residential purposes as alleged by the Plaintiff. Suffice it to say that the averments made in the written statement clearly accept the existence of the jural relationship of landlord and tenant between the parties no matter the lease agreement was not duly registered. Whether the tenancy was for residential or commercial use of the property is wholly immaterial for the grant of a decree for possession. Even if the premises were let out for commercial and not residential use, the fact remained that the Defendant-Respondent entered upon and is occupying the property as a tenant under the

Plaintiff. The nature of this use may be relevant for determination of mesne profits but not for passing of a decree for possession against the Defendant.

11. Incidentally, the Defendant appears to have raised in the written statement a plea regarding the nature and extent of the super structure also. While the Plaintiff's case is that the super structure as it existed on the date of the lease deed had been let out to the Defendant and the Defendant had made structural changes without any authorisation, the Defendant's case is that the super structure was constructed by her at her own cost pursuant to some oral agreement between the parties. It is unnecessary for us to delve deep into that aspect of the dispute, for the nature and extent of superstructure or the legality of the changes allegedly made by the Defendant is not relevant to the determination of the question whether the existence of tenancy is admitted by the Defendant. At any rate, nature and extent of structure whether modified or even re-constructed by the Defendant is a matter that can not alter the nature of the possession which the Defendant holds in terms of the agreement executed by her. The relationship of the landlord and the tenant remains unaffected even if the tenant has with or without the consent of the landlord made structural changes in the property. Indeed if the tenancy was protected by the rent law and making of structural changes was a ground for eviction recognised by such law, it may have been necessary to examine whether the structure was altered and if so with or without the consent of the parties. That is not the position in the present case. The tenancy in question is not protected under the Rent Control Act having regard to the fact that the rate of rent is more than Rs. 3500/- per month. It is, therefore, of little significance whether any structural change was made by the Defendant and if so whether the same was authorised or otherwise. The essence of the matter is that the relationship of the landlord and the tenant is clearly admitted. That is the most significant aspect to be examined by the Court in a suit for possession especially when the Plaintiff seeks a decree on the basis of admissions.

12. That brings us to the second question, namely, whether the tenancy stands terminated either by lapse of time or by a notice served upon the Defendant. The Defendant-tenant did not have the benefit of a secure term under a registered lease deed. The result was that the tenancy was only a month to month tenancy that could be terminated upon service of a notice in terms of Section 106 of the Transfer of Property Act. The Plaintiff's case in para 6 of the plaint was that a notice was served upon the tenant Under Section 106 of the Transfer of Property Act pointing out that the Defendant-tenant had made substantial structural changes in the premises and had not

complied with the terms of the lease agreement. The notice was duly served upon the tenant to which the tenant has not replied. Para 6 reads as under:
"That since the Defendant had carried out substantial structural changes and further did not comply with the covenants of the lease agreement the Plaintiff was compelled to serve a notice Under Section 106 of the Transfer of Property Act. The said notice was duly served upon the Defendant and no reply to the said notice has been received by the Plaintiff or its Counsel."
13. In reply, the Defendant has not denied the service of a notice upon the Defendant. Instead para 6 is entirely dedicated to the Defendant's claim that the whole structure standing on the site today has been constructed by her out of her own money. The Defendant has not chosen to deny even impliedly leave alone specifically that notice dated 17th March 2003 was not served upon her. In para 6 of the preliminary objections raised in the written statement she has simply disputed the validity of the notice on the ground that that the same is not in accordance with Section 106 of the Transfer of Property Act. Para 6, reads as under:
"That the alleged notice dated 17th March, 2003 is not as per the provisions of Section 106 of Transfer of Property Act. It is settled law that notice for termination of lease has to be in mandatory terms so specified in Section 106 of Transfer of Property Act."
14. Far from constituting a denial of the receipt of the notice the above is an admission of the fact that the notice was received by her but the same was not in accordance with Section 106 of the Transfer of Property Act. In fairness to Counsel for the tenant-Respondent in this appeal, we must record that the order passed by the High Court was not supported on the plea of the notice being illegal for any reason. A copy of the notice in question is on the record and the same does not, in our opinion, suffer from any illegality so as to make it non-est in the eye of law.

8. In K. Seetharam (supra) the Hon'ble Supreme Court was dealing with the case of encroachment and on the facts of it held that a fair reading of the written statement showed that the defendants denied the allegations that it has encroached on a portion of plaintiff's land for construction of building. Thus, the same has no relevance to the facts of the present case.

9. Thus, while determining the issue whether the plaintiffs are entitled to a judgment on the basis of facts admitted in the written statement, the issue whether the defendants have spent money on the renovation or that the notice was defective which has not been explained as to how, have no

relevance. Thus, the plaintiffs are entitled to a decree of possession on the basis of the admissions in the written statement.

10. Consequently, a preliminary decree is hereby passed in favour of the plaintiffs and against the defendants directing the defendants to vacate the premises and handover the vacant peaceful possession of the ground floor premises of A-27, Nizamudin West, New Delhi consisting of one dining room, three bed rooms with attached bath rooms, a kitchen and a servant quarter and front lawn as described in the site plan.

11. The application is disposed of.

Sd/-
(MUKTA GUPTA)
JUDGE

AUGUST 22, 2013