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Kanwal Kishore Manchanda and anr. Vs. S.D. Technical Services Pvt. Ltd.

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Court : Delhi

Decided On : Apr-08-2005

Reported in : 121(2005)DLT98; 2005(81)DRJ715

Judge : Pradeep Nandrajog, J.

Acts : Limitation Act, 1963; Specific Relief Act, 1963 - Sections 39 and 41; Code of Civil Procedure (CPC) - Order 2, Rules 1, 3, 4 and 6 - Order 7, Rule 11 - Order 12, Rule 6; Judicial Officers Protection Act, 1850; Government Grant Act, 1895; Transfer of Property Act, 1882 - Sections 106; Delhi Rent Control Act, 1958; Evidence Act - Sections 115

Appeal No. : IAs 4174/2004 and 956/2004 in CS(OS) No. 1559/2003

Appellant : Kanwal Kishore Manchanda and anr.

Respondent : S.D. Technical Services Pvt. Ltd.

Advocate for Def. : G.S. Raghav, Adv.

Advocate for Pet/Ap. : Sandeep Sethi, Sr. Adv. and; P.S. Bindra, Adv

Disposition : Appeal allowed

Judgement :

Pradeep Nandrajog, J.

1. Present order disposes of is No. 956/2004 filed by the plaintiffs against the defendant invoking provisions of Order 12 Rule 6 of the Code of Civil Procedure as also is No. 4174/2004 filed by the defendant invoking provisions of Order 7 Rule 11 of the Code of Civil Procedure.

2. Since survival of the suit in this court would be a condition precedent for deciding under Order 12 Rule 6, it would be advisable to first dispose of defendants' application under Order 7 Rule 11 of the Code of Civil Procedure.

3. As per is No. 4174/2004, it is stated by the defendant that the suit merits rejection for the reasons:-

6. That it is borne out from a plain perusal of the averments in the plaint that the Plaintiffs are seeking both the above mentioned reliefs i.e. recovery of Rs.20,00,500/- and mandatory injunction directing commanding and requiring the Defendant to discharge all claims and demands of Delhi Vidyut Board and its successor BSES Rajdhani Power Ltd. in respect of electricity connection K.No. 521706 and K.No. 5204836 which admittedly pertain to the period prior to 1991 and both the reliefs are clearly beyond the period of limitation as prescribed under Limitation Act, 1963 accordingly both the reliefs are hopelessly barred by law of limitation and the Plaintiffs' as well as the supplier's right to sue had been extinguished long time ago by operation of law of limitation thereforee, the entire plaint is liable to be rejected under mandatory provisions of Order 7 Rule 11 (d) CPC.

7. That otherwise also the plaintiffs are seeking the relief No. (iv) in a clever manner to create the illusion of cause of action for mandatory injunction in favor of third parties without making them parties to the present suit deliberately though they are necessary and proper parties to the suit and on meaningful reading of the plaint it is manifestly clear that plaint does not disclose a right to sue in favor of the Plaintiffs thereforee, the entire plaint is liable to be rejected under mandatory provisions of Order 7 Rule 11 (a) CPC.

8. That the present suit is liable to be dismissed inasmuch as the relief No. (iv) sought in the suit are barred by express provisions of Section 41(i) of Specific

Relief Act, 1963 because the Plaintiffs claiming to be the owners of the suit property have admittedly defaulted in payment of property tax to the tune of over Rs. 50 lacs resulting the proposed sale of suit property in auction by MCD and electricity dues over Rs. 20 lacs as registered consumer resulting disconnection of electricity to the premises in 1991 consequently, the conduct of the Plaintiffs has disentitled them to the relief No. (iv) i.e. mandatory injunction under section 39 of Specific Relief Act, 1963 in respect of relief, hence the entire plaint is liable to be rejected.

9. That the plaint does not disclose a cause of action in favor of the Plaintiffs in respect of the reliefs Nos. (ii) and (iv) and moreover, both the reliefs are hopelessly barred by law of limitation thereforee, such a suit should not be allowed to continue and go for trial and it is liable to be nipped in bud by throwing it out at the very threshold.

10. That since mere perusal of the plaint leaves no doubt that both the reliefs No. (ii) and (iv) are clearly barred by law of limitation and the provisions of section 41(i) of Specific Relief Act, 1963 the plaint has to be rejected as whole as part only of a plaint can not be rejected.

4. It is trite that to decide under Order 7 Rule 11, averments in the plaint have to be read without looking at the defense and thereupon it has to be seen whether on the averments made in the plaint, Order 7 Rule 11 gets attracted or not.

5. Suit is for ejectment and mesne profits/use of occupation charges and damages. Prayer made in the suit is as under:-

(i) A decree against Defendant for ejectment from the suit premises being ground floor portion of the building constructed on Plot No. B-87, Mayapuri Industrial Area Phase-I, New Delhi, comprising right side office rooms, Centre Bay and Godown and one Bay without any portion of the terrace (total covered area of 8450 sq.ft. approx. plus open lane on right side and open lane at front).

(ii) A decree of recovery against the Defendant for Rs.20,00,500/- towards damages on account of disconnection of electricity connection K.No. 521706 and

K.No. 5204836 and for pendentelite and future period @ Rs.50,000/- per month or such amount as determined by this Hon'ble Court keeping in view the market rate of rent for premises not used due to disconnection of the electricity connection.

(iii) For a decree of recovery against the Defendant for Rs.1.00 lakh towards mesne profits/use and occupation charges for the month of June, 2003.

(iv) Pass a decree of mandatory injunction directing, commanding and requiring the Defendant to discharge all claims and demands of the Delhi Vidyut Board and its successor BSES Rajdhani Power Ltd. In respect of Electricity Connection No. K.No. 521706 and K.No. 5204836 and the outstanding water bills and other municipal dues.

(v) A decree of recovery against the Defendant for pendente-lite and future use and occupation charges/ mesne profits at market rate of rent, prevailing for like premises from time to time, in respect of the suit premises and damages for disconnection of Electricity.

6. A brief resume of the averments in the plaint may be penned down.

7. It is asserted in the plaint that vide license agreement dated 25.2.1983, father of the plaintiffs, late Sh.Ram Parkash granted a temporary license to the defendant permitting use of the ground floor portion of an industrial building constructed on plot No. B-87, Mayapuri Industrial Area, Phase-1, New Delhi, comprising right side of his room, centre bay and godown and one bay without any portion of the terrace on a monthly license of Rs.10,000/-. It is stated that in April, 1988, a portion of the first floor of the premises was also permitted to be used as a licensee by the defendant and license fee was enhanced from Rs. 10,000/- to Rs. 12,000/- per month. On demise of late Sh.Ram Prakash on 25.7.1990, plaintiffs assert that the defendant, in accordance with the will left behind by late Sh.Ram Parkash attorney to the plaintiffs and accepted the plaintiffs as licensors/owners of the premises and started paying the license fee.

8. It is stated in the plaint that the defendant continued to pay the license fee @ Rs. 12,000/- p.m. till February 1992 when the same was enhanced by a mutual

agreement to Rs. 20,000/- p.m. and continued to pay the same till the month of September, 1994. It is stated that with effect from 1.10.1994, defendant stopped paying any license fee.

9. It is averred in the plaint that on 16.11.2002, plaintiff through counsel issued a legal notice terminating the license with effect from 31.5.2003 and called upon the defendant to remove it's belongings lying in the licensed premises on or before 31.5.2003. It is stated in the plaint that the notice stipulated that if defendant claimed to be a tenant in respect of the premises in question, tenancy would stand determined with effect from 31.5.2003. In such eventuality, defendant was directed to restore the physical possession of the premises to the plaintiffs after 31.5.2003 failing which it would be assumed that the use and occupation by the defendant was unauthorized for which defendant would be liable to pay market rent @ Rs. 1,00,000/- p.m.

10. Plaint asserts that the notice aforesaid was duly served upon the defendant. It is stated in the plaint that defendant replied to the notice aforesaid vide its counsel's reply dated 1.3.2003. It is further averred in the plaint that in the reply, defendant alleged that late Sh.Ram Prakash Arora was not the proprietor of M/s Ram Prakash Kanwal Kishore but was a partner thereto. Plaint asserts that this defense raised in the reply was a clear departure from the earlier admission of the defendant as contained in its letter dated 20.10.1990 wherein defendant admitted and attorney to Sh.Ram Prakash Arora as enjoying the status of the sole proprietor of M/s Ram Prakash Kanwal Kishore.

11. It is averred in the plaint that the defendant wrongly alleged in the reply that an area admeasuring 208.75 sq.mtr. was surrendered to the plaintiffs on 21.2.1993 and that a further area admeasuring 8.8 sq.mtr. of stairs leading to the first floor was surrendered. It is further asserted that the reply to the notice further wrongly averred that total area of 574.5 sq.mtr. was surrendered. It is further stated in the plaint that the reply to the notice further wrongly averred that the defendant was in possession of an area admeasuring 643.5 sq.mtr. only.

12. It is averred in the plaint that about 1750 sq.ft. area approximately was surrendered in the year 1993 and first floor portion was surrendered on 23.6.2002

without any proportionate deduction and liability to pay the license fee.

13. It is averred in the plaint that due to misuse by the defendant and non-payment of dues to DVB, the only electricity connection to the suit premises was disconnected. Defendant filed a writ petition against DVB, being WP(C) No. 121/1992, in which defendant was required to pay certain sums on recurring basis. It is asserted in the plaint that since there was only one electricity connection for the entire building which was lying dis-connected due to misuse/non-payment of electricity dues by the defendant, plaintiffs were constrained to file WP(C) No. 1732/1992 praying for directions against DVB to grant new connection.

14. It is stated in the plaint that due to defaults of the defendant, entire building is without electricity and as a consequence, plaintiffs are unable to use such of the portions which are in their possession. It is further averred that the defendant has failed to deposit the water bills and other municipal dues.

15. Plaintiffs further state that the response of the defendant in the lawyer's reply dated 1.3.2003 that the rent was never enhanced from Rs.12,000/- to Rs. 20,000/- p.m. stands falsified by defendants' letter dated 12.2.1997 wherein defendant enclosed TDS certificates for the period April, 1996 to December, 1996.

16. On the allegations aforesaid, suit has been filed praying for the reliefs as noted in para 5 above. Grounds on which Order 7 Rule 11 has been invoked are to be found in paras 6 to 10 of defendants' application, averments whereof have been noted in para 3 above.

17. Order 7 Rule 11 of the Code of Civil Procedure reads as under:-

11. Rejection of plaint. -

The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.

18. It is averred, in relation to prayers (ii) and (iv) (Refer para 6 of is No. 4174/2004) that the reliefs claimed are barred by limitation and the suit pertaining to said reliefs should be rejected under clause (d) or Order 7 Rule 11.

19. In so far as prayer (ii) of the plaint is concerned, plaintiffs have claimed damages and loss suffered due to dis-connection of electricity supply for the reason it is averred in the plaint that not all portions of property bearing No. B-87, Mayapuri Industrial Area, Phase-1, New Delhi were let out and since only one connection was granted by DVB, plaintiffs suffered damages due to dis-connection of electricity supply.

20. Damages have been claimed @ Rs.50,000/- p.m. Surely, plaintiffs would be entitled to damages for a period of 3 years in the minimum, preceding the date when the suit was filed. The suit pertaining to prayer (ii) would be maintainable in respect of a three year period reckoned retrospectively from the date when the suit was filed.

21. Qua prayer No. (iv), it has to be noted that it does not duplicate prayer No. (ii) for the reason prayer No. (iv) seeks a mandatory injunction against the defendant

to discharge claims and demands of DVB.

22. On the issue of limitation qua prayer No. (iv), plaintiffs assertions in para 6 of the plaint need to be noted. It is stated in said para that the defendant filed a Writ Petition No. 121/1992 challenging disconnection of electricity supply by DVB. It is averred that defendant was required to pay certain sums on recurring basis. It is averred that subsequently defendant applied for withdrawal of the writ petition which was not allowed to be withdrawn in view of non-compliance of various orders passed in the writ petition, defendant being the defaulter.

23. Issue would have to be considered in light of the writ petition filed by the defendant and interim orders passed by this court. Issue would further require to be considered whether it constitutes a recurring cause of action, for the reason till electricity charges are not cleared, authority supplying electricity would be entitled not to restore electricity connection and as a consequence thereof the industrial building would remain unfit to be put to any use and occupation.

24. Suit pertaining to prayers (ii) and (iv) cannot thereforee be held to be barred by limitation. Clause (d) of Order 7 Rule 11 CPC is not attracted as pleaded in para 6 of the application by the defendant.

25. In para 7 of the application, defendant avers that relief (iv) has been cleverly worded to create an illusion of a cause of action. It is averred that mandatory injunction is prayed for in favor of three parties without making them a party. It is averred that the third parties are necessary and proper parties.

26. Third parties referred to in para 7 of the application would be DVB and its successor BSES Rajdhani Power Limited.

27. As observed above, till as long electricity dues are not cleared, electric supply to the entire building would not be restored and issue which would require to be considered and determined would be whether plaintiffs would have a recurring cause of action against the defendant. Further, defendant cannot absolve itself from the liability to pay for civic amenities like water and electricity consumed by the defendant. Defendant would be liable to clear the dues towards electricity

consumed by the defendant.

28. That payment has to be made to a third party would not make the third party a proper or a necessary party. As long as non-payment to the electricity supply authority results in continued non-supply of electricity to the premises, plaintiffs would continue to suffer an injury. If non-performance of a statutory obligation by the defendant to the authority supplying electricity is resulting in an injury to the plaintiffs, plaintiffs would be entitled to maintain an action on said cause against the defendant.

29. For the purposes of para 7 of the application, defendant invokes clause (a) of Order 7 Rule 11 CPC.

30. Order 7 Rule 11(a) requires a plaint to be rejected where it does not disclose a cause of action.

31. What then is a cause of action? Till there is no cause, there cannot be any action. For a cause, there has to be a right to sue. Infringement of a right or a clear and unequivocal threat to infringe that right would constitute a cause to bring an action. Whether a particular threat gave rise to a compulsory cause of action depends upon the question whether that threat effectively invades or jeopardises the right.

32. To constitute a cause of action, first is the coming into existence of a right, and secondly, its infringement or threat to be infringed.

33. Usually, cause of action in substance denotes and determines the starting point of limitation.

34. It is also understood as the bundles of facts which have to be averred and proved to sustain an action.

35. As understood above, it cannot be said that relief No. (iv) or the entire plaint merits rejection for the reason it does not disclose a cause of action.

36. The plaint states the following facts:-

(a) that the plaintiffs are owners of the suit premises and claim ownership under their late father;

(b) that the defendant was inducted in the suit premises as licensee by the late father of the plaintiffs and on his death defendant attorney to the plaintiffs;

(c) that the last license fee paid was @ Rs.20,000/- p.m.

(d) that the premises in possession of the defendant was not the entire industrial building;

(e) that the entire industrial building was serviced by one electricity connection which was misused by the defendant and due to misuse and non-payment of electricity dues, authority supplying electricity had discontinued electricity supply.

(f) that the defendant had stopped paying the license fee effective from 1.10.1994.

(g) that till the electricity dues were not cleared, authority supplying electricity would not restore electricity supply to the premises and would also not grant new connection;

(h) that as a result of non-supply of electricity, remaining portion of the property could not be put to use.

(i) that the plaintiffs gave six months notice requiring the defendant to vacate the premises in its occupation.

(j) that with the determination of the license or if the defendant claimed to be a tenant the tenancy possession of the defendant post 1.6.2003 became unauthorized.

37. The facts pleaded in the plaint and as noted above clearly disclose a cause of action entitling the plaintiff to maintain the suit. Whether or not the plaintiff is able to sustain the action or not is distinct from the maintainability of the action. Sustainability of the action would depend on the evidence once led.

38. Suit cannot be rejected for the grounds urged by the defendants in para 8 of the application. Whether the plaintiffs have cleared property tax or not is irrelevant for the purposes of the suit. That the MCD has proposed the sale of the suit property to recover its dues is irrelevant. Till as long the property is not sold, plaintiffs would have a right to act as owners thereof and especially qua the defendant for the reason plaintiffs assert that the defendant has attorney to the plaintiffs. It is not a case where the plaintiffs admit having lost title. Besides this is the defense taken and has to be ignored for purposes of deciding an application under Order 7 Rule 11 CPC.

39. Grounds as set out in paras 9 and 10 of the application are a repetition of grounds urged in para 6. Issue raised is predicated on the law of limitation.

40. I have dealt with the issue of limitation and need not reiterate the legal position.

41. Section 41(i) of the Specific Relief Act, 1963 has been referred to in para 10 of the application in aid of the assertion that the suit merits rejection.

42. Section 41(i) of the Specific Relief Act, 1963 reads as under:-

Section 44. An injunction cannot be granted:

a. .....

h. when the conduct of the plaintiff or his agents has been such as to dis-entitle him to the assistance of the court.

43. Issue of conduct is a matter of evidence. Whether or not injunction should be granted has to be decided at the end of trial. In any case, plaintiffs have not admitted anywhere in the plaint that their conduct is such so as to dis-entitle the plaintiffs from assistance of this court.

44. At the hearing held on 11.3.2005, learned counsel for the defendant adopted an obstructive attitude. inspire of being reminded that judicial time has to be rationed in the current scenario where there is docket explosion, counsel refused to centre on the issue and wanted to consume precious judicial time on irrelevant

issues. When repeatedly required by the court to centre on the issues urged in the application, counsel with great difficulty managed to cite a decision of the Division Bench of the Andhra Pradesh High Court reported as : AIR 1979 AP253 Muddada Chayanna v. G. Veerabhadrarao and Ors.

45. A perusal of the judgment of the Division Bench of the Andhra Pradesh High Court shows that Order 7 Rule 11 of the Code of Civil Procedure was considered by the court. The facts on which Order 7 Rule 11 was invoked were that the appellant therein had instituted a suit for recovery of Rs.98,353.36 against defendants No. 1 to 4 towards damages for irregularities in conducting the sale of immovable property. Defendant No. 1 was the judge under whose orders sale was conducted. Defendant No. 2 was the receiver appointed by defendant No. 1. Defendant No. 3 was an executive officer of the decree holder and defendant No. 4 was the counsel who appeared for defendant No. 3. Plaint as a whole had been rejected as it was held that the defendant No. 1 was entitled to the protection of Judicial Officers Protection Act, 1850 and no suit would be maintainable against him for any act performed in judicial capacity and in good faith.

46. Since the plaint as a whole was rejected, submission made before the Division Bench was that the plaint could not have been rejected in qua defendants No. 2 to 4. Learned Division Bench held that if any defect of the kind mentioned in Order 7 Rule 11 of the CPC is noted, the plaint has to be rejected as a whole and in that view of the matter, it was held that the rejection of the plaint in its entirety was valid.

47. Decision of the Division Bench of the Andhra Pradesh High Court would reveal that the plaint came to be rejected for the reason that claim predicated qua defendant No. 1 was barred by law (Judicial Officers Protection Act, 1850). Of course, the Division Bench held in addition that if any part of the claim is barred under any law, suit as a whole merits rejection for the reason Order 7 Rule 11 does not make any reservations in the matter pertaining to the rejection of the plaint.

48. I just do not see any applicability of the decision of the Andhra Pradesh High Court to the facts of the present case. Present case is not where there are more

than one defendants. Entire claim is against a solitary defendant.

49. What counsel for the defendant had in mind was Order 2 Rule 4 as has been recorded by me in my order dated 11.3.2005. But if that was so, counsel for the defendant was expected to make submissions in respect of Order 2 Rule 4 of the Code of Civil Procedure.

50. Notwithstanding the fact that the application does not invoke Order 2 Rule 4 of the Code of Civil Procedure but since said provision prohibits the joining of cause of action without leave of the court in a suit for recovery of immovable property, argument was permitted to be raised for if argument was found to be with merit, it would have resulted in the plaint being prohibited by law. But rather than making submissions on Order 2 Rule 4, counsel cited decision of the Andhra Pradesh High Court.

51. Order 2 Rule 4 of the Code of Civil Procedure reads as under:-

4. Only certain claims to be joined for recovery of immovable property-

No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immovable property, except -

(a) claims for mesne profits or arrear of rent in respect of the property claimed or any part thereof

(b) claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

52. Clause (c) of Rule 4 of Order 2 in one of the exceptions qua claims from the prohibition of joining cause of action in a suit of recovery of immovable property.

53. It is trite that every suit requires to be framed so as to afford grounds for final decision upon the subjects in disputes and to prevent further litigation concerning them. Further, every suit has to include the whole of the claim which the plaintiff is entitled to claim in respect of the cause of action, subject of course to the plaintiff voluntarily relinquishing any portion of his claim. Under Rule 3 of Order 2, save as otherwise provided, a plaintiff is permitted to unite in the same suit several causes of action against the same defendant. Where a plaintiff does so and it appears to the court that the joinder of cause of action in one suit may embarrass or delay the trial or is otherwise inconvenient, under Rule 6 of Order 2, a court is empowered to order separate trials or make such other order as may be expedient in the interest of justice.

54. Rule 4 of Order 2 and in particular clause (c) thereof has to be read and understood in the scheme of the preceeding and succeeding rules of Order 2.

55. Plaintiffs would be entitled to frame a suit to include all claims against the defendant so that they may be able to obtain a final decision upon the subjects in dispute and to prevent further litigation. The word used in Rule 1 of Order 2 is subjects, a word with a plural meaning as against the singular meaning if the word used was subject.

56. A reading of the plaint would disclose that the case set up by the plaintiffs is that the defendant came into possession of the suit premises which had an electricity connection and for electricity consumed defendant had to pay the electricity bills. Alleging breach against the defendant and determination of the license/tenancy, plaintiffs seek recovery of possession/mandatory injunction.

57. Since plaintiffs gave an unencumbered property to the defendant, plaintiffs would be entitled to receive possession of the property in the same state. Claims pertaining to recovery of possession, damages for unauthorized occupation, mandatory injunction to clear electricity dues and damages suffered by the plaintiffs by acts of the defendant which has resulted in other portions of the property being rendered unfit for use and occupation are so inter wovened on facts that it cannot be said that the reliefs sought suffer from misguide or the frame of the suit is hit by Order 2 Rule 4 C.P.C.

58. What has to be noticed is that a landlord/licensor would be entitled to receive back possession from the tenant/licensee the tenanted/licensed premises in the same condition as it was when it was tenanted/licensed. Order 2 Rule 4 has no role to play in the present suit in context of the plea of the defendant that the plaint merits rejection under Order 7 Rule 11 CPC.

59. For purposes of Order 7 Rule 11 CPC, it is a meaningful and not a formal reading of the plaint which is required to be done. A plaint which is manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue and taking care that the grounds mentioned in Order 7 Rule 11 of the Code of Civil Procedure are attracted, would require such plaint to be thrown out at the threshthresholdhold for the reason no person would be entitled to inconvenience a defendant through the medium of the process of law. Irresponsible law suits are the ones to which Order 7 Rule 11 of the Code of Civil Procedure is directed against.

60. I find no merit in is No. 4174/2004. On the contrary, I find that the application has been filed to delay the trial in the suit and in fact came to be filed after plaintiffs sought decree on admission. I find that the application is vexatious. The application is dismissed with costs in sum of Rs.25,000/- in favor of the plaintiffs and against the defendant.

61. Dealing with the plaintiff's application under Order 12 Rule 6, I need not recap the case set out by the plaintiff for the reason the same has been noted by me in paragraphs above while dealing with defendants' application under Order 7 Rule 11 CPC.

62. In para 36 above, I have noted the various facts asserted in the plaint. Let me look at the written statement for the reason, according to the plaintiffs application defendant has admitted the following:-

(i) its induction as licensee;

(ii) payment of license fee to the plaintiffs;

(iii) receipt of termination notice of license/ tenancy.

63. According to the plaintiffs, the three admissions are sufficient to entitle the plaintiffs to a decree on admission pertaining to ejectment of the defendant from the suit premises.

64. In the written statement filed by the defendant, it is averred that the plot of land on which an industrial building stands constructed, was obtained on a perpetual lease by M/s Ram Prakash Kanwal Kishore Arora. It is averred that the said firm constituted a partnership without prior permission of the title paramount. It is averred that defendant obtained a license in respect of use and occupation of the suit property effective from 25.9.1983 (same date has asserted in the plaint). It is asserted that after initial license period was over, under an oral agreement defendant became a tenant under M/s Ram Prakash Kanwal Kishore. It is stated that sum of Rs.10,000/- paid per month was towards rent. It is stated in the plaint that the rent was increased to Rs.12,000/- per month.

65. It is averred in the written statement that DDA determined the perpetual lease granted in favor of Ms.Ram Prakash Kanwal Kishore Arora, however, written statement admits that DDA did not re-enter the property. It is admitted that electricity supply has been disconnected to the premises. It is further admitted that the defendant filed a writ petition being number 121/92 seeking directions against DVB. Defendant admits liability to pay rent but avers that the same is @ Rs.6,200/- p.m.

66. It is stated in the written statement that towards recovery of property tax, MCD has initiated action for sale of the property. However, there is no assertion in the written statement that MCD has auctioned the suit property for recovery of its dues.

67. Assertion in para 2 of the plaint that after the death of late Sh.Ram Prakash, defendant started paying rent to the plaintiffs has not been denied. Though, for record I may note that a very evasive reply has been filed to the averments made in para 2 of the plaint.

68. Para 2 of the plaint reads as under:-

After the demise of Shri Ram Parkash on 25.7.1990, the Defendant in accordance with the last Will left behind by Shri Ram Parkash attorney to and accepted the Plaintiffs as licensors/owners of the suit premises and started paying the license fee to the plaintiffs. In April, 1988, a portion of the first floor of the premises was also permitted to be used on license by the Defendant and in consideration thereof the license fee was enhanced from Rs.10,000/- to Rs.12,000/- per month. The Defendant paid the enhanced license fee of Rs.12,000/- up to February 1992 and thereafter the monthly license fee was further enhanced by mutual agreement to Rs.20,000/-.

69. Para 2 of the written statement reads as under:-

That the contents of para 2 of the suit plaint are not admitted as same are false, misrepresentation of facts thus denied. It is denied that after the demise of Sh.Ram Prakash Arora, the Defendant in accordance with the alleged last Will of Sh.Ram Prakash Arora, attorn and accepted the Plaintiffs as licensor/ owners of the suit premises and started paying the license fee to the Plaintiffs. As a matter of fact, Sh.Ram Prakash Arora was not legally competent to make any such Will without prior consent of paramount Lesser i.e. DDA in writing in respect of a grant under Government Grant Act, 1895 and such consent/permission admittedly was never obtained by Sh.Ram Prakash Arora from DDA. Further more, for flagrant violation of clause II (5)(a) of the Perpetual Lease Deed dated 25-09-1967, DDA the paramount Lesser vide its letter dated 13-11-1984 had already been canceled/determined the Perpetual Lease Deed and lease holds in the plot of land granted in favor of M/s Ram Prakash Kanwal Kishore. As a matter of act, after the demise of Sh.Ram Prakash Arora, the Plaintiffs simply admitted the status of the Defendant as a tenant through an oral rent agreement in the suit premises accordingly they were paid rent as landlord/landlady. Moreover, in view of open breach of law contained in the grant under Government Grant Act, 1895 and first by the original lessee and subsequently by the Plaintiffs and they still continue to be in breach of numerous covenants, terms and conditions of Perpetual Lease and in the light of DDA's notice dated 13-11-1984 to determine/terminate the perpetual lease, the Plaintiffs are not the owner of the suit property and further the question of ownership amongst between the daughters and son of late Sh.Ram Prakash

Arora is subjudice as it is pending adjudication before this Hon'ble Court in suit No. 687/1993. It is specifically denied that after February, 1992 the monthly rent was further enhanced by mutual agreement to Rs.20,000/-. The monthly rent of the premises is still Rs.12,000/-.

It is further submitted that rent @ Rs. 12,000/- per month was in respect of entire area as originally rented out to the Defendant in 1983 and subsequently, out of total area of tenancy, the Defendant on a specific request had handed over actual and physical possession of area measuring 154.9 sq.mts. of covered shed and further an area measuring 208.75 sq.mts. open bay No. 4 on 21st February, 1993 i.e. 28% of tenanted area to the Plaintiff No. 1. Like wise additional area of 8.8 sq. mts. of stairs leading to first floor and another area of 207.3 sq. mts. at first floor was handed over to the Plaintiff No. 1 on 1st March, 1996 thereforee, a total area of 574.5 sq. mts. amounting to 47.4% area of originally tenanted premises has already been actually returned to the Plaintiff No. 1 consequently w.e.f. 01-03-1996, the Defendant is left in possession of an area measuring 643.5 sq. mts. only i.e. 52.6% of the originally rented area and this hard fact is clearly admitted by the Plaintiff No. 1 in his letter dated 14-10-1996 addressed to the Defendant. In view this, the Defendant is legally entitled to proportionate per month reduction in rent. A copy of the letter is annexed hereto as ANNEXURE-D-5.

70. There is no denial to the assertion of the plaintiffs that the defendant started paying license fee on death of Sh.Ram Prakash.

71. Assertions of the plaintiffs that they issued a notice dated 16.11.2002 requiring the defendant to remove the belongings from the suit premises by 11.5.2003 and if defendant claimed to be a tenant to treat the tenancy as having determined with effect from 31.5.2003 have been met with the following response:-

That the contents of para 4 of the plaint are not admitted as the same are misconceived, untenable and false thus denied. It is submitted that prior filing the present suit for ejectment, the Plaintiffs have not legally terminated the tenancy of the Defendant in the suit premises thereforee, due non-compliance of the mandatory provisions of section 106 Transfer of Property Act, 1882 is not maintainable.

72. Reply is evasive. What the plaintiffs have asserted in para 4 of the plaint is as under:-

By a notice dated November 16, 2002 issued by the Plaintiffs' Counsel to the Defendant, the Plaintiffs terminated the Defendant's license in respect of the suit premises with the close of 31.5.2003 and required the Defendant to remove its belongings lying the premises on or before 31.05.2003. The notice further stated that if the Defendant wrongly claimed to be tenant in respect of the said premises, the Plaintiffs terminate the tenancy with the close of 31st of May, 2003 and required the Defendant to restore the vacant physical possession of the premises to the Plaintiffs on or before the said date failing which the Defendant shall be in unauthorised use and occupation of the siad premises and shall liable to pay to the Plaintiffs use and occupation charges at market rate prevailing from time to time which presently works out to Rs. 1.00 lakh per month. The notice also demanded outstanding license fee not paid by the Defendant.

73. It is relevant to note in this context that in para 6 of the plaint, plaintiffs have asserted that the defendant, vide its counsel's reply dated 1.3.2003 responded to their lawyer's legal notice dated 16.11.2002. In response thereto i.e. in response to para 6 of the plaint, defendant has not denied that its lawyer did not respond vide response dated 1.3.2003 to the plaintiffs lawyer's notice dated 16.11.2002.

74. Whether the defendant is a licensee or a tenant would be of hardly any significance for the reason whether it is rent or license fee, amount paid is more than Rs.3,500/- per month and, thereforee, defendant would not have the protection of the Delhi Rent Control Act, 1958.

75. Having not denied that it was paying license fee/rent to the father of the plaintiff and on his demise to the plaintiff, defendant would be estopped from challenging the title of the plaintiffs or their father by virtue of Section 115 of the Evidence Act.

76. Since premises is an industrial premises, plaintiffs have served upon the defendant a notice as per Section 106 of the Transfer of Property Act giving six months' time to the parties to vacate i.e. determining the tenancy with a prior

notice of 6 months. Defendant has asserted in the written statement that after initial license of 11 months was over, under an oral agreement of tenancy, it continued to occupy the suit premises. If there was an oral tenancy, the same has to be from month to month for the reason defendant has not pleaded any specific period of the tenancy. On the contrary, what is pleaded by the defendant is as under:-

Defendant was allowed to use the premises as tenant through an oral tenancy with enhanced rate of rent @ Rs. 1200/- p.m., thereforee, the status of the defendant is admittedly of a tenant and not a licensee as alleged.

77. To be entitled to a decree of ejectment against a tenant, plaintiffs have to prove that they are the landlord of the tenanted premises; that tenancy has been determined whether by efflux of time or otherwise and that after determination of the tenancy defendant has continued to be in unauthorized occupation. In the instant case, defendant has not denied the receipt of the notice determining tenancy with effect from 31.5.2003 vide notice dated 16.11.2002. Payment of rent to the plaintiff being admitted, defense that due to breach of the terms of the perpetual lease or non-payment of municipal taxes, title of the plaintiff has been lost is not available to the defendant for the reason there is no assertion that DDA re-entered the premises or that MCD auctioned the same.

78. Under Order 12 Rule 6, plaintiff would be entitled to a judgment on admission of fact having been made either in the pleading or otherwise, whether orally or in writing.

79. In a matter pertaining to ejectment of a tenant in Delhi where (i) the relationship of landlord and tenant is admitted; (ii) the tenancy being validly terminated is admitted; and (iii) that the rent was more than Rs.3,500/- p.m. is admitted, plaintiff would be entitled to judgment under Order 12 Rule 6 CPC (See Laxmikant Srikant HUF v. M.N. Dastoor 71 1978 DLT 564; K. Kishore and Construction HUF v. Allahabad Bank 71 (1978) DLT 581.

80. is No. 956/2004 filed by the plaintiffs is accordingly allowed. A decree for ejectment of the defendant is passed on admission in respect of the suit premises

as per prayer (i) of the plaint.

81. Plaintiff would be entitled to costs in respect of is No. 956/2004 in sum of Rs.10,000/- against the defendant.

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