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**SooperKanoon Citation : [sooperkanoon.com/701688](http://sooperkanoon.com/701688)**

**Court : Delhi**

**Decided On : Jul-04-2000**

**Reported in : 2000VAD(Delhi)797; 86(2000)DLT654; 2000(54)DRJ850**

**Judge : K.S. Gupta, J.**

**Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order XII, Rule 6; [Transfer of Property Act, 1882](#) - Sections 113; [Evidence Act, 1872](#) - Sections 116**

**Appeal No. : I.A. No. 2217/98 in S. No. 513-A/96**

**Appellant : Sona Devi and Another**

**Respondent : M/S. Puran Chand Packaging Industries Pvt. Ltd.**

**Advocate for Def. : Sh. Sandeep Aggarwal and ; Ms. Pooja Parmar, Adv.**

**Advocate for Pet/Ap. : Sh. J.P. Sengh and; Sh. S.K. Bhaduri, Adv**

**Judgement :**

**ORDER**

**K.S. Gupta, J.**

1. In this suit for possession and injunction etc. the plaintiffs have filed I.A. 2217/93 under Order 12, Rule 6 read with Section 151 CPC, inter alia, alleging that the defendant was inducted in property bearing No. D-29, S.M.A. Industrial Area, G.T.

Karnal Road under an agreement dated 12th June, 1987. In Para No. 3 of the written statement the defendant has admitted that it was inducted in the suit property by plaintiffs. The plaintiffs terminated lease/licence of the defendant by a notice dated 7th December 1994 which was duly received by it. In Para No. 16 of the written statement, on merits, the receipt of said notice is admitted by defendant. It is further alleged that defendant cannot challenge the title of plaintiffs to the suit property under the provisions of Evidence Act. In view of the admissions made in written statement the plaintiffs are entitled to a decree for possession of the suit property. It is prayed that a decree for possession of the suit property may be passed in favor of the plaintiffs and against the defendant.

2. Defendant has contested the application by filing reply. It is alleged that plaintiffs have deliberately omitted to state the defense taken in written statement by the defendant. In Para No.2 of the preliminary objections of written statement the defendant has denied that plaintiffs are the owners of suit property. In Para No. 16 of written statement it is pleaded that the lease/licence was not validly terminated by the notice dated 7th December 1994 and that notice was later on waived when the plaintiffs made application for enhancement of rent by 30% after every 35 months. Defendant has also made a counter claim which is yet to be decided. It is emphatically denied that the plaintiffs under Order 12, Rule 6 CPC are entitled to the possession of suit property at this stage.

3. I have heard Sh. J.P. Sengh for plaintiffs and Sh. Sandeep Aggarwal for defendant and have also been taken through the record.

4. Admittedly, the defendant was inducted in the suit property under a Leave and license agreement dated 12th June, 1987, photostat copy whereof is placed at pages 2 to 7 on Part III file. Clauses 1, 10 and 14 of this agreement which are relevant, read as under:

'1) That the licensor have undertaken to pay a sum of Rs. 16,500/- per month excluding consumption charges for industrial power, commercial light and water charges on or before the 7th day of each English calendar month. The payment for industrial power, commercial light and water charges shall be paid by the licensee.

10) That the licensee can terminate this licence/ agreement and vacate the licensed premises after serving one month notice in writing to the licensor.

14) After the completion of 35 months the licensor shall terminate the license and stop the licensee to use the premises.

It (ought to have been 'if') the licensor (ought to have been licensee') prefers to use the premises for next 35 months i.e. for 36th to 70th month, they can do so only with increase of 30% in license fee.

That the license shall be renewed at the option of licensee for a further succession (ought to have been succeeding) period of 35 months at increased license fee by 30% over the last license fee paid.'

5. It is alleged in the written statement that said agreement in fact is a lease agreement. The plaintiffs also treating the defendant as tenant terminated the lease by the notice dated 7th December, 1994 (copy at pages 28 to 30) got issued through a counsel. In terms of this notice the lease of defendant was terminated on the midnight of 11th June, 1995 and if the defendant thought that its lease starts from 1st day of August then in that event on the midnight of 31st day of June, 1995. Receipt of this notice is admitted by the defendant in written statement.

6. It was contended on behalf of defendant that the notice dated 7th December 1994 was waived by plaintiffs. In support of the submission my attention was drawn to the order dated 15th December, 1994 (copy at pages 12 to 18) passed by a Division Bench of this court in Company Appeal No. 7/94 and C.W.P. 3665/93. It was further contended that under Clause 10 of the agreement dated 12th June 1987 the right to terminate lease is given only to defendant and thus the lease could not have been validly terminated by the said notice dated 7th December, 1994 by plaintiffs. As a part of the submission it was also urged that plaintiffs are not the owners of suit property and the option to renew lease as per said agreement could not be exercised by defendant for the reasons mentioned in written statement.

7. As is manifest from the said order dated 15th December, 1994 C.W.P 3665/93 was filed by the defendant against MCD and its Licensing Department seeking to quash the order dated 18th May, 1993 of MCD and for direction to its Licensing Department to grant license for running factory, to the petitioner. The order dated 18th May, 1993 was issued by the MCD raising objection that suit property was registered with the DDA in the name of M/s. Starlite Traders and more than 50% area thereof could not be sublet to any other person including the petitioner. In the application made to the MCD by the petitioner it was mentioned that the licensee was M/s. Lala Plastics. As is further evident from the said order in Company Appeal No. 7/94 which was also taken up Along with said C.W.P 3665/93 the counsel for appellants (plaintiffs in this case) stated before the Division Bench that his client will not raise any objection before the MCD with regard to lawful possession of the property under the license/lease deed nor will any objection be raised by M/s. Lala Plastics or by Atma Ram. Accordingly, the MCD was directed to process the application of petitioner for grant of license on that basis and the case was adjourned to 3rd February, 1995 to await the decision of MCD in the matter. Observations to which my attention was drawn appearing on internal page No. 5 of the said order read as follows:-

'In the meantime, the petitioner M/s. Puran Chand Packaging Pvt. Ltd., will continue to deposit the rents payable to the landladies i.e. Sona Devi and Bimla Devi in the Company Petition No. 116/90 and the company will not raise any objection to the said landladies withdrawing the rents as and when they are deposited.'

8. It was pointed out that the rent deposited pursuant to said direction had been withdrawn in Company Petition No. 116/95 by the plaintiffs and those withdrawals amount to waiving of the said notice dated 7th December, 1994. Admittedly, said company petition was dismissed as withdrawn pursuant to the statement made before the Supreme Court on behalf of plaintiffs on 23rd February, 1996. It may be noticed that the scope in said C.W.P 3665/93 was limited to the issue of license to defendant and if pursuant to direction/under taking extracted above the plaintiffs had withdrawn rents deposited by defendant, the same would not constitute waiver of the said notice within the meaning of Section 113 of Transfer of Property Act. A

waiver means abandonment of a right which may be either express or implied from conduct and basic requirement of such abandonment is that it must be an intentional act with knowledge which element is missing in the present case.

9. This brings me to yet another limb of argument that under the aforesaid agreement the right to terminate lease is available only to the defendant. As is evident from aforementioned clause 1 of the agreement the defendant had undertaken to pay Rs. 16,500/- per month excluding the consumption charges of industrial power, commercial light and water charges on or before 7th day of each English calendar month to the plaintiffs. Section 108 of the Transfer of Property Act deals with the rights and liabilities of the Lesser and lessee. Clause (c) of this section provides that the Lesser shall be deemed to contract with the lessee that, if the later pays the rent reserved by the lease and performs the contract binding on the lessee, he may hold the property during the time limited by the lease without interruption. Clause (i) thereof further says that the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the Lesser or his agent in this behalf. Under the aforesaid agreement suit property was given to the defendant initially for a block of 35 months which period at the option of defendant could be extended by another block of 35 months each twice on payment of 30% increase in license fee. In my view, under aforementioned clause 10 the defendant was given a right to terminate the lease/license if it so desired even during the subsistence of the initial or extended block (s) of 35 months by giving one month's notice. This clause thus cannot come in the way of plaintiffs in terminating the lease of defendant in the event of non payment of rent by it as stipulated in above clause (1) of the agreement.

10. As regards the last limb of argument referred to above, suffice it to say that having admitted that defendant was inducted into suit property by the plaintiffs, it is not open to the defendant to deny the title of plaintiffs to the suit property under Section 116 of Evidence Act.

11. In *Surjit Sachdev Vs . Kazakhstan Investment Services Pvt. Ltd. & Ors.*, : 66(1997)DLT54 it was held by this Court 'that the factors which deserve to be taken into consideration in order to enable the Court to pass a decree under Order

12, Rule 6 CPC in a suit for possession are (a) existence of relationship of Lesser and lessee or entry in possession of the suit property by the defendant as tenant, and (b) determination of such relation in any of the contingencies as envisaged in section 111 of Transfer of Property Act. Unequivocal admission of these two factors will entitle the plaintiff to a decree on admission'. Apart from the determination of relationship of Lesser and lessee between the parties by the said notice dated 7th December, 1994, even the period of two extensions which are permissible under the said agreement dated 12th June, 1987 has come to an end in the month of April, 1996 and the defendant thus is not entitled to retain the possession of the suit property now.

12. therefore, a decree of possession deserves to be passed under Order 12, Rule 6 CPC in favor of the plaintiffs and against defendant leaving the balance reliefs as claimed in the suit as also the counter claim to be decided on merit on the basis of evidence to be led by the parties.

13. Consequently, the application is allowed and a decree of possession in respect of suit property No. D-29, S.M.A Industrial Area, G.T. Karnal Road, Delhi, as shown in red in the site plan attached to the plaint is passed in favor of the plaintiffs and against defendant. Defendant is, however, allowed one month time to deliver the vacant possession of property to the plaintiffs.