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Court : Delhi

Decided On : Sep-24-2001

Reported in : 2002(61)DRJ676

Judge : V.S. Aggarwal, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 151 - Order 1, Rule 10(2) - Order 12, Rule 6 - Order 14, Rule 2; Delhi Rent Control Act

Appeal No. : IA 9842/99 in Suit No. 825/94

Appellant : Jasmer Singh Sarna and ors.

Respondent : Electronics Trade and Technology Development Corporation Ltd.

Advocate for Def. : Manoj Arora and ; Ravi Srivastava, Adv.

Advocate for Pet/Ap. : P. Banerjee, Adv

Disposition : Suit decreed accordingly

Judgement :

V.S. Aggarwal, J.

1. Jasmer Singh Sarna and two others (hereinafter described as plaintiffs) have filed the suit for recovery of possession and mesne profits.

2. The facts alleged are that plaintiffs are owner/landlords of the property in dispute. The defendant Corporation Ltd.) is a Government of India enterprises. By virtue of the lease dated 13th June, 1980 the entire property comprising of basement, ground floor, mezzanine floor and first floor was let to the defendant for a period of five years. The defendant was given the option to renew the lease and the defendant vide letter of 6th April, 1985 accepted terms and conditions for continuance of the lease for a period of three years. The rent was increased.

3. It is asserted that the tenancy of the defendant was terminated by a notice dated 12th January, 1994 with effect from mid night of 13/14th March, 1994. At the request of defendant, plaintiffs without prejudice to the notice of offered to let the premises at an enhanced rent of Rs.70/- per sq. ft. which was not accepted by the defendant. The present suit has been filed for recovery of possession alleging that the tenancy of the defendant has since been terminated and it is in unauthorised occupation. In addition to that mesne profits are also being claimed.

4. In the written statement filed the suit of the plaintiff has been contested. It has been asserted that it is actuated with mala fides. The real intention is to renew the lease. The purported figure of monthly rent stated by the plaintiff is arbitrary. After terminating the tenancy of the defendant, the plaintiff is stated to have issued two letters of 4th March, 1994 and 10th March, 1994 offering to extend the lease for a period of two years. on merits of the matter it is not denied that defendant had taken the premises on rent and that after the expiry of the first five years of lease the parties had mutually agreed to renew the lease for three years. The lease was further extended for a further period of two years. The rent on each occasion was enhanced. The notice purported to have been issued by the plaintiff terminating the tenancy was stated to be not valid. It is alleged that plaintiff had served two notices of 4th March, 1994 and 10th March, 1994 offering to extend the lease and the defendant had not turned down the offer but were negotiating with the plaintiff as regards the rent. It is denied in these circumstances that plaintiff was entitled to a decree for possession.

5. During the pendency of the suit, the plaintiff filed the application under order 12 Rule 6 CPC (IA 9842/99). By and large the facts alleged were similar to those of the plaint but suffice to say that plaintiff asserted that defendant was as tenant of the plaintiff in the suit property. Lease deed had been executed on 13th June, 1980. The tenancy of the defendant thereafter was terminated vide a notice. The facts have been admitted by the defendant in the written statement as well as the documents filed, thus the plaintiff is entitled to the decree for possession. In the reply filed the defendant contests the said application. It is asserted that the application filed is not maintainable because earlier is 11575/96 was filed which was rejected and the court did not permit a preliminary issue in this regard to be framed. So far as mesne profit is concerned the defendant pleaded that it has to be decided only after recording of evidence. It is denied that defendant is in illegal occupation of the premises or that the said notice terminating the tenancy was valid. The plea of the written statement was reiterated that the earlier notice lost its validity because of the subsequent notices of 4th March, 1994 and 10th March, 1994 whereby the plaintiff agreed to renew the lease.

6. As a apparent from these facts recorded above, the short question that comes up for consideration is as to whether on basis of pleadings and the documents filed the plaintiff is entitled to a decree for possession or not. Before proceeding further one can take note of the plea raised by the defendant that the present application is not maintainable because of the dismissal of a similar earlier application purported to have been filed whereby the court had rejected the request for treating issues no. 1, 2 and 4 as preliminary issues. On 6th May, 1996, this court had framed the issues nos. 1, 2 and 4, which read as under:-

1. Whether the notice dated 12.1.1994 is not a legal and valid notice?
2. Whether by letters dated 4.3.94 and 10.3.94 the plaintiff had extended the tenancy? If so, to what effect?
3. Whether the plaintiff is entitled to relief of possession?
7. An application is 11575/96 was filed and this court rejected the claim of the plaintiff that these issues should be treated as preliminary issues. Indeed in normal

circumstances the plea raised by the defendant could well have prevailed. But the scope of Order 12 Rule 6 is totally different from that of Order 14. Order 12 Rule 6 Code of Civil Procedure permits the court to pronounce a judgment on admissions either in the pleadings or otherwise. While, Order 14 casts a duty on the court to frame the issues and under Order 14 Rule 2 certain preliminary issues can be framed otherwise the court is to pronounce judgment on all the issues. thereforee, it is patent that it is one thing to state that an issue should be treated as a preliminary issue and another thing to state whether on basis of the admissions having been made in the pleadings or otherwise the court can pronounce the judgment under Order 12 Rule 6 or not. In that view of the matter it is felt that the said order passed by this court on the earlier occasion will not put an embargo to decide the present application filed under Order 12 Rule 6 CPC.

8. Reverting back to the main controversy Order 12 Rule 6 can well be taken note of which reads:-

6. 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 up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced.

9. The reproduced Order 12 Rule 6 CPC above clearly indicates that where admissions have been made in the pleadings or otherwise, whether oral or in writing, the court can at any stage of the suit having regard to the admission make an order or give such a judgment. The scope of Order 12 Rule 6 has been considered more often than once by this court. In the case of Atma Ram Properties Pvt. Ltd. v. Air India : 65(1997)DLT533 , this court decried the purpose of keeping the suits pending when there is no plausible defense that is offered by the defendant. In paragraph 13 it was held:-

'No one can quarrel with the proposition of law laid down in these cases. But the question is how to apply the principle to the facts of the case. If the defendant raises a point which deserves to be considered at the time of trial of the case nobody can have any exception to the course that the matter should go on for trial. But if the defendant raises a defense which cannot be countenanced at all, I ask myself the question what is the purpose of posting the matter for trial and keeping the matter pending for years which will not serve any purpose. By this process, cases have to be kept pending unnecessarily, I have no doubt, in my mind on the facts presented before me, the plaintiff is entitled to the relief asked for in this application.'

10. Similarly in the case of Laxmikant S (HUF) v. M N Dastur Co. 1998 RLR 171 a civil suit had been filed for possession and for recovery of certain amounts. The written statement was filed contesting the suit therein also an application under Order 12 Rule 6 Civil Procedure Code had been preferred. This court allowed the application and held that if main allegations of the plaintiff are not disputed but the defendant raised contentions which are vexatious, preposterous, contrary, to law against the settled legal position and in that event it is proper to exercise the discretion under Order 12 Rule 6 and accordingly the civil suit was decreed.

11. Similarly in the case of R. Kishore Construction v. Allahabad Bank 1998 RLR 248 this court again held that the court can grant a judgment or a decree on admitted facts. Admissions may arise from pleadings, documents or otherwise. A Division Bench of this court in the case of Mani Mann v. Ram Dulari : 90(2001)DLT305 had also the occasion to consider the similar controversy. The principle that was finally enunciated by this court were the same as referred to above and it was held that pleas which are legal can always be gone into. The precise operative part of the judgment is to the following effect:-

'14. In view of this, we are of the opinion that the impugned decree for possession was rightly passed on the basis of admission. As the admissions narrated above are sufficient to enable the respondent to get the decree in her favor, the pleas which were raised by the appellant in the written statement or before us were purely legal pleas which could be considered without any evidence

and as noticed above, these pleas being meritless could not deter the learned Additional District Judge from passing the impugned judgment and decree.....'

12. It is obvious from aforesaid that normally when there are clear and unambiguous admission only the court would act under Order 12 Rule 6 CPC. If the facts are in controversy in ordinary course the court will defer passing any judgment in this regard but legal pleas can always be considered. If the defense offered is not plausible or is preposterous the court would not hesitate in proceedings further and passing the decree or the judgments prayed because in that event indeed it is not in the interest of justice and it would be contrary to the spirit of Order 12 Rule 6 CPC.

13. The service of the notice in the present case is not being disputed. The defendant does not assert that the month of the tenancy is other than what is being alleged by the plaintiffs. In the absence of any specific denial it must be taken that the month of the tenancy is as alleged by the plaintiff.

14. The notice alleged to have been served by the defendant is of 12th January, 1994. By virtue of the said notice the tenancy of the defendant was determined from the midnight of 13th 14th March, 1994. Clearly more than 15 days notice had been served ending with the month of the tenancy and therefore it must be held to be valid.

15. On behalf of the defendant great stress was laid on the fact that despite the said notice it was waived because of the two subsequent letters written by the plaintiff to the defendant dated 4th March, 1994 and 10th March, 1994. To appreciate the same both letters dated 4th March, 1994 and 10th March, 1994 are being reproduced below for the sake of facility.

'Sub: Renewal of Lease for 15/48 Malcha Marg, New Delhi-10021

Dear Sir,

This is further to our last meeting on February 28, 1994, attended by you, Mr. K. Vaitheeswaran, Chief General Manager, Lt. Col. B R Kayastha, Dy. General Manager (Adm), Mr. N S Maini and myself.

You had indicated that pursuant to our reducing the amount of rent payable by ET&T; Corporation Ltd., New Delhi from March 14, 1994, onwards, for the above mentioned premises, from Rupees Eighty (Rs. 80,00) per sq. ft. to Rupees Seventy (Rs. 70.00) per sq. ft for a total area of 9564 square feet, you feel confident that the matter can be settled. Since you had requested a confirmation in writing to this effect, we would be willing to enter into a fresh Lease Agreement at the said rate a further period of two (2 years).

This is without prejudice to our legal Notice No. VS/6/96 dated January 12,1994.'

March 14,1994

'Sub: Renewal of Lease for 15/48 Malcha Marg, New Delhi-110021

Dear Sir,

This is further to letter dated March 4, 1994 and your letter no. 01/64/1/OP 15/48/61 BRK dated March 4, 1994.

Please intimate acceptance of rent payable by ET&T; Corporation Ltd., New Delhi from March 14,1994 onwards of the above mentioned premises, at Rupees seventy (Rs. 70.00) per sq. ft for a total area of 9564 square feet, so that we can further discuss the terms of the fresh Lease Agreement.

This is without prejudice to our legal Notice No.VS/6/96 dated January 12, 1994.'

14. It was urged on behalf of the defendant that these notices clearly show the intention on the part of the plaintiffs to waive the earlier notice and create a fresh lease. But this particular argument necessarily has to be stated to be rejected. Reasons are obvious. Both the notices clearly mention that it is without prejudice to the legal notice of 12th January, 1994. therefore by no stretch of imagination it can be stated that any fresh lease after determination of the tenancy of the defendant had been created. At best these notices indicated only an intention to create a fresh lease on behalf of the plaintiffs. But it could not mature into a contract. The defendant even admits that they were at the negotiating stage and no fresh lease or consent had been given in pursuance of these notices of 4th

March, 1994 and 10th March, 1994. In face of this fact the only conclusion that can be arrived at is that it cannot be stretched to the extent that the notice had been waived and the contention so raised necessarily must be rejected.

15. Faced with this situation the learned counsel for the defendant relied on the fact that in the gift deed purported to have been executed the defendant has been described to be a tenant and therefore it is asserted that the earlier notice must be taken to have been waived or the right so accrued had been abandoned. Before proceeding further some of the relevant facts in this regard can be mentioned. As had been stated above, the civil suit had been filed by three plaintiffs. During the pendency of the suit an application under order 1 Rule 10 (2) read with Section 151 CPC was filed asserting that Smt. Harkaur Sarna, plaintiff no.3 had died and that Joginder Kaur Sarna, plaintiff no.2 was one of the co-owners. She had executed a gift deed of her share in favor of plaintiff no.1. This court on 27th March, 2001 permitted the name of plaintiff no.2 to be deleted from the array of the parties. The gift deed dated 7th June, 2000 purported to have been so executed has been placed on the record. Reliance is being placed on the fact that in the gift deed executed by Joginder Kaur Sarna it has been mentioned that the property is in occupation of the defendant as a tenant at a monthly rent of Rs. 87, 500/- and therefore it is claimed that this must be taken to be an admission in terms that the defendant continues to be a tenant rather than a person whose tenancy had been determined. But the said contention again is totally devoid of any substance. This is not a document executed in favor of the defendant to give the defendant a cause to allege that he has been accepted as a tenant. It has already been referred to above that after the expiry of the lease and on termination of lease no further contract has been arrived at between the parties. In the absence of any fresh contract and contractual lease having been determined the defendant cannot claim that he would become a tenant afresh. This expression 'Tenant' is obviously loosely used in the gift deed. There is no waiver or abandonment of a right. An abandonment of right is a consciously giving up a right in favor of a particular person. This can be seen from facts and circumstances or if there is any express provision or background to that effect. In the present case as already referred to above, there is no fresh contract and even the defendant does not admit that it had arrived at any fresh contract. Therefore, by no stretch of imagination it can be

taken that there is no abandonment of the right on basis of the said stipulation in the gift deed to which defendant is not even the party. Even this contention must fail.

16. Admittedly, the rent of the premises is more than Rs. 3500/- and therefore provisions of Delhi Rent Control Act are not applicable. The tenancy has been terminated and consequently the plaintiff is entitled to a judgment with respect to possession of the premises.

17. Keeping in view the totality of facts the suit of the plaintiff is decreed to the extent that plaintiff is entitled to the possession of the premises. Defendant is granted four months time to vacate the same.

Suit 825/94

List it for directions on 20th February, 2002.

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