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Puran Chand Packaging Industrial Pvt. Ltd. Vs. Smt. Sona Devi and anr.

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Court : Delhi

Decided On : May-26-2008

Reported in : 154(2008)DLT111; (2009)153PLR25

Judge : Mukul Mudgal and; V.K. Shali, JJ.

Acts : Code of Civil Procedure (CPC) - Sections 151 - Order 12, Rule 6 - Order 39, Rule 10

Appeal No. : RFA (OS) 41/2000, CM 11857/05, 12541/05, 15940/06, 2790/07 and 4701/07

Appellant : Puran Chand Packaging Industrial Pvt. Ltd.

Respondent : Smt. Sona Devi and anr.

Advocate for Def. : R.K. Jain and ; Vikas Chadha, Advs.

Advocate for Pet/Ap. : Sandeep Agarwal and; K.A. Singh, Advs

Disposition : Appeal allowed

Judgement :

V.K. Shali, J.

1. The present appeal has been filed by the appellant/defendant against the order dated 4th July, 2000 passed by the learned Single Judge in Suit No. 513-A/1996

by virtue of which a decree for possession in respect of the suit premises has been passed in favour of the respondents/plaintiffs on the basis of an application filed by them bearing IA No. 2217/1998 under Order 12 Rule 6 read with Section 151 of the CPC.

2. Briefly stated the case set up by the appellant/defendant in the appeal is that the appellant/defendant was granted a leave/licence in respect of property bearing No. D-29, S.M.A. Industrial Area, GT Karnal Road, Delhi vide agreement dated 12th June, 1987. The relevant terms and conditions of the agreement are as under:

1) That the licensee 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 licence 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 licence fee.

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

3. A perusal of the aforesaid conditions would show that though the appellant/defendant was given leave/licence in respect of the premises in question but both the parties in fact intended to grant lease in respect of the property in question, which was originally for a period of 35 months extendable on the discretion of the appellant/defendant for another block of 35 months with the increase of 30% of the licence fee. It is alleged by the appellant/defendant that the

respondents/plaintiffs who were claiming themselves to be the owners of the property in question purportedly gave a notice dated 7th December, 1994 to the appellant/defendant asking him to vacate the premises whereafter, the respondents/plaintiffs filed a suit for ejectment and permanent injunction against the appellant/defendant.

4. The appellant/defendant filed a detailed written statement contesting the claim of the respondents/plaintiffs for ejectment. The appellant/defendant took the plea that the respondents/plaintiffs are not the owners though they were the landlords. The quantum of rent being Rs. 16,500/- per month was also not disputed. It was also admitted by the appellant/defendant that a notice of termination dated 7th December, 1994 was received by them. However, it was stated by the appellant/defendant that the said notice dated 7th December, 1994 was totally illegal, unwarranted and in any case stood waived on account of the fact that after the service of the notice the respondents/plaintiffs had increased the rent of the premises in question by 30%, which was accepted by the respondents/plaintiffs.

5. In addition to this, the appellant/defendant had also raised a preliminary objection with regard to the maintainability of the suit for ejectment and injunction on the ground that according to the terms and conditions of the agreement, the respondents/plaintiffs were to provide 120 H.P. Load of electricity at the premises in question while he was provided only 65 H.P. load because of which upto 31st January, 1988, the appellant/defendant could not carry out his business of manufacturing HDPE granules and other connected activities. The appellant/defendant had suffered losses because of this which have been quantified by him under different heads to the tune of more than Rs. 10 lacs (Rupees ten lacs). The appellant/defendant had also set up a counter claim approximately for Rs. 42 lacs (Rupees forty two lacs) while contesting the suit for ejectment of the respondents/plaintiffs.

6. After completion of pleadings of the parties, the respondents/plaintiffs filed an application bearing IA No. 2217/1998 under Order 12 Rule 6 read with Section 151 of the CPC contending that the appellant/defendant has made an admission about the factum of relationship of landlord and tenant and the factum that he had

received the notice of termination of tenancy dated 7th December, 1994, accordingly, the decree for possession in respect of the suit premises be passed on the basis of admission of the appellant/defendant. The said application of the respondents/plaintiffs was contested by the appellant/defendant who filed a detailed reply taking the plea stating therein that before a judgment on the basis of admission could be passed, there must be an unequivocal and unambiguous admission on the part of the appellant/defendant. It was denied that the appellant/defendant has made unequivocal, unambiguous admissions. On the contrary it was urged that he has raised various objections which go to the root of the matter which if permitted to be proved would disentitle the respondents/plaintiffs to a decree of possession. It was also contended that the written statement is to be read, as a whole & one or two sentences are not to be torn out of context so as to read as an admission of a party.

7. The learned Single Judge after hearing the learned Counsel for the parties has passed the impugned order decreeing the suit for possession of the respondents/plaintiffs against the appellant/defendant in respect of the suit property vide order dated 4th July, 2000 rejecting the plea of the appellant/defendant with regard to the waiver of the notice dated 7th December, 1994. The learned Single Judge has also observed so far as enhancement of rent by the respondents by 30% and the consequent acceptance the same, is concerned, it could not be deemed to have waived notice dated 7th December, 1994 given by the respondents/plaintiffs to the appellant/defendant to vacate the premises. It has also been observed by the learned Single Judge that not only the appellant/defendant has admitted the relationship of the tenant and landlord qua the respondents/plaintiffs but he has occupied the premises in question not only for initial period of 35 months but even for the extended block of 35 months. It was further observed that even this extended period of 35 months had come to an end by efflux of time and, therefore, the respondents were entitled to a decree for possession. So far as the counter claim of the appellant/defendant is concerned, it was observed by the learned Single Judge that the same could continue and be decided on merits.

8. The only short question which arises for consideration in the instant case is as to whether a decree for possession on the basis of the admission purported to have been made by the appellant/defendant could be passed. Before advertng to the same it will be worthwhile to reproduce the language of Order XII Rule 6:

Order XII Rule 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. A perusal of the aforesaid provision would show that before a decree on the basis of admission in the pleadings can be passed, the admission must be made by the defendant or a party to the proceedings in an unequivocal, unambiguous manner. In other words the admission should not be vague or equivocal. Converse of it would mean that if there is an admission made by a party which is conditional wherein certain objections which go to the root of the matter have been raised then it could not be treated as an admission. Reliance in this regard can be placed in *State Bank of India v. Midland Industries and Ors.* : AIR1988 Delhi153 . Though this is a judgment of the learned Single Judge of this Court but as this judgment lays down the correct proposition of law we have no hesitation in approving the same. Another point which has to be borne in mind while passing a judgment on the basis of an admission is that the document is to be read as a whole and the Court is not to take out one or two sentences so as to treat it as an admission. Moreover passing of a judgment on this basis by the Court is a matter of discretion and not a matter of course. Reliance in this regard is placed on *Manisha Commercial Ltd. v. N.R. Dongrre and Anr.* : AIR2000 Delhi176 .

10. Coming back now to the facts of the present case, no doubt, the appellant/defendant has admitted the relationship of landlord and tenant, the rate

of rent or for that matter service of notice dated 7th December, 1994, but despite this it could not be treated as an unequivocal, unambiguous admission on account of the fact that the appellant/defendant has raised objections in the instant case which go to the root of the matter. These objections are firstly, so far as the question of notice of termination of tenancy dated 7th December, 1994 is concerned, the appellant/defendant has raised an objection that the said notice has been waived by acceptance of rent by the respondent/plaintiff. The question as to whether the notice has been waived or not is a question of fact which can be decided by the court only after the parties are permitted to adduce their evidence. The learned Counsel for the respondent/plaintiff has relied upon case titled as Central Bank v. Lalit K. Bhargava 2006 RLR 355, wherein the Division Bench of our own High Court has held that acceptance of rent does not amount to waiver of notice or creation of a new tenancy. It is further observed that money is taken as damages for use and occupation of the premises.

11. Though, prima facie, the submission of the appellant/defendant may be correct but waiver of notice is a question of fact which a party should be permitted to prove. Acceptance of rent could not be treated as waiver of notice as a matter of course so as to warrant a passing of a judgment and decree under Order 12 Rule 6 of the CPC. If it is a question of fact which goes to the root of the matter as in the present case it has to be then decided after parties are given time to adduce evidence. This is the error which has occurred in the impugned Judgment. By making observations that the acceptance of rent by the respondents/defendants does not tantamount to the waiver of the notice of termination of tenancy, the Learned Single Judge has gone into merits of the plea. Further it has been observed that not only the original period of tenancy of 35 months has come to an end but even the extended period of 35 months in which the party could have exercised its option to continue on increase of rent by 30% has also come to an end by efflux of time & therefore, he must vacate. These factors in our consideration are extraneous which ought not have been considered by the Learned Single Judge in deciding an application under Order XII Rule 6 of the CPC.

12. Decision on the above plea could not be attributed to be as an admission on the part of the appellant/defendant rather it is in the nature of an adjudication of the plea raised by either of the parties on merits. In addition to this the appellant/defendant had also raised the plea with regard to the fact that under the agreement the respondent was under an obligation to provide electricity of 120 HP load power while he has only provided electricity to the extent of 65 HP on account of which the premises could not be gainfully utilized. Keeping in view the aforesaid discussion, we are of the considered opinion that so far the decree of possession, which has been passed in the instant case on the purported admission to have been made by the appellant/defendant, was not based on unequivocal, unambiguous admission. There were objections raised which are question of fact which go to the root of the matter. Therefore, the appeal is allowed and impugned judgment and decree dated 4th July, 2000 is set aside & the matter is remanded back to the Learned Single Judge to be proceeded further in accordance with law.

13. During the course of arguments it has been pointed out by the learned Counsel for the respondents/plaintiffs that the appellant/defendant has not paid the arrears of rent/damages/user charges w.e.f. 1st September, 2001 which has not been disputed by the appellant/defendant though it is stated that it is payable only w.e.f. 1st December 2001 & not from 1st September 2001. Be that as it may, the tenant cannot be permitted to use & occupy the premises to the detriment of the respondents and contest the suit for eviction without putting him into terms. This is also the laid down in Order XXXIX Rule 10 which reads as under:

XXXIX Rule 10 - Deposit of money, etc., in Court. Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

14. A perusal of the aforesaid provision would show that it would not only be just but also equitable that while remanding the matter back for adjudication of the suit on merits, the appellant be directed to pay to the respondents/plaintiffs the arrears

of rent/damages/user charges for the suit premises under his occupation w.e.f. 1st December, 2001 up to 30th April, 2004 @ Rs. 16,500/- per month which is the admitted amount not later than 31st July 2008 from today and thereafter continue to pay on or before 7th of each English calendar month a sum of Rs. 16,500/- per month to the respondent. The interest, if any payable, for the delayed payment is left open for determination in the suit. Ordered accordingly.

15. With these observations, the appeal of the appellant/defendant is allowed. and the judgment and order of the learned Single Judge dated 4th July 2000 in Suit No. 513A/1996 is set aside. No order as to costs.

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