

Dharamraj Prasad and Anr Vs. Sanjoy Kumar Sett

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Court : Kolkata

Decided On : Aug-04-2016

Judge : Indira Banerjee

Appellant : Dharamraj Prasad and Anr

Respondent : Sanjoy Kumar Sett

Judgement :

ORDER

SHEET GA No.2031 of 2016 APDT No.13 of 2016 IN THE HIGH COURT AT CALCUTTA Civil Appellate Jurisdiction ORIGINAL SIDE DHARAMRAJ PRASAD & ANR Versus SANJOY KUMAR SETT BEFORE: The Hon'ble JUSTICE INDIRA BANERJEE The Hon'ble JUSTICE SAHIDULLAH MUNSHI Date : 4th August, 2016.

Appearance: Mr.Chayan Gupta, Adv.Mr.Abhijit Chowdhury, Adv.Ms.Jonaki Saha,Adv.Ms.Sutapa Sanyal,Adv.Ms.Payal Bhattacharyya, Adv.The Court : This appeal filed by the defendant- appellants is against a judgement and order and the decree dated 13th June,2016 whereby the learned Single Bench allowed the application being GA No.739 of 2016 taken out by the plaintiffrespondent under Order 12 Rule 6 of the Code of Civil Procedure for final judgement upon admission in the Suit being CS No.346 of 2014 filed by the plaintiff-respondent, inter alia, for eviction of the defendant-appellants.

According to defendant-appellants, the plaintiff- respondent filed the suit for eviction of the defendant-appellants without producing any document to show that the plaintiff respondent had any right, title or interest in the suit property.

The defendant-appellants filed a written statement denying that the defendant-respondent had any right, title or interest in the suit property.

After discovery and inspection and filing of affidavits of documents when the suit was ready for hearing.

The plaintiffrespondent took out the said application under Order 12 Rule 6 of the Code of Civil Procedure being GA No.739 of 2016.

In the said application the plaintiff-respondent contended that the defendant-appellants had made an admission in an application under Section144(2) of the Code of Criminal Procedure and, in particular, paragraph 5 thereof which is set out herein below: The petitioner states that the company previously used to have its registered office at 11, Ho Chi Minh Sarani, Kolkata-700071, an Armenian Property.

The opposite party, erstwhile Managing Director of the petitioner company, also had his resident in the same property under lease.

In the year 1987 the opposite party made arrangement for his stay in 11, Ho Chi Minh petitioner Sarani, herein Kolkata is still - 700071.

working The with the aforesaid company and he has been associated with the company for the last 25 years.during (sic.

During) his petitioner Identity stay had Card, in the obtained Andhar aforesaid property his Card, Card, PAN and Gas the Voter Cylinder connections in the aforesaid address.

The Opposite Party being a tenant/lessee himself is not in control and/or possession of the room where the petitioner is residing. The defendant-appellants filed their affidavit-in-opposition to the said application denying that the defendant-appellants had made any admission as alleged either express or implied.

plaintiff-respondent filed an affidavit in reply to The the said affidavit-in-opposition.

The short question in this appeal is whether the above quoted paragraph is such an admission of facts as to entitle the plaintiff-respondent to final judgement upon admission followed by a decree of eviction.

Order 12 Rule 6 of the Code of Civil Procedure provides that 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 on its own motion and without waiting for the determination of any other questions between the parties, make such order or give such judgement as it may think fit, having regard to such admissions.

The object of Order 12 Rule 6 is to enable a party to obtain speedy judgement, at least to the extent of the relief to which the plaintiff is, according to the admission of the defendant, entitled.

Wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed, as held by the Supreme Court in *Uttam Singh Dugal & Co.LTD.versus Union of India* reported in AIR 2000 SC2740(2743) : (2000) 7 SCC120 If there is any admission on behalf of the defendants, or admission can be inferred from the facts and circumstances of the case, without any dispute, then in such a case, in order to expedite or dispose of the matter, such admission can be acted upon.

This proposition finds support from the judgement of the Supreme Court in *Charanjit Lal Mehra versus Kamal Saroj Mahajan* reported in AIR 2005 SC2765 As held by the learned Division Bench of this Court in *Dinesh K.*

*Singhania versus Calcutta Stock Exchange Association LTD.*reported in 2005 (2) CHN601(605).where admission of facts has been made by either of the parties in pleadings or orally or in writing or otherwise, judgement may be given by the Court to the extent of the admission, on its own motion or on the application of any party.

There can be no doubt that the admission may be made either orally or in writing.

Such admission may be in the pleadings, in the suit or elsewhere.

Any admission in an application under Section 144(2) of the Code of Criminal Procedure could also be an admission.

However, as observed above, the admission must be a clear admission of the claim at least to some extent.

When there is such admission, to eliminate delay in the matter of dealing with the disputes between the parties, final judgement may be passed upon the admission.

The paragraph in the application under Section 144(2) which the plaintiff respondent claims is an admission, only reads that the erstwhile Managing Director of the petitioner, that is the plaintiff respondent, had made arrangements for the stay of the defendant appellants at 11, Ho Chi Minh Sarani, Kolkata - 700 071.

There is further admission that the defendant appellants were still working with the aforesaid company and had been associated with the company for several years. The aforesaid admission cannot possibly amount to admission of existence of any of the ground on which the plaintiff respondent has claimed eviction of the defendant appellants from the suit premises.

Maybe the defendant appellants did not have a strong defence to the claim of the plaintiff respondent, but then as noted in difference the judgement between an award application under for appeal, summary judgement Chapter 13A of the Original Side Rules of this Court, is a summary application for judgement upon admission.

If in an eviction suit filed on the ground of nuisance and unauthorised sub-letting, sub-letting was admitted, but nuisance denied, perhaps the Court could pass final judgement based on the admission, and decree the suit for eviction on the ground of unauthorised sub-letting.

The example is only illustrative.

In our view, admission of the defendant appellants that the plaintiff respondent made arrangements for their accommodation in the suit premises does not amount to an admission of existence of any of the grounds urged in the plaint for eviction of the defendant appellants.

The judgement and order under appeal cannot, therefore, be sustained.

The appeal is allowed and the judgement and order under appeal is set aside.

(INDIRA BANERJEE, J.) (SAHIDULLAH MUNSHI, J.) C.

Sinha & K.

Banerjee A.Rs.[C.R.].

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