(2016) 10 DEL CK 0034

DELHI HIGH COURT

Case No: C.R.P. 94 of 2016 and CM No. 24150 of 2016 (for interim orders)

Deepak Jain		APPELLANT
	Vs	
Kamal Garg		RESPONDENT

Date of Decision: Oct. 5, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 12 Rule 6

Citation: (2016) 160 DRJ 161

Hon'ble Judges: Mr. Jayant Nath, J.

Bench: Single Bench

Advocate: Mr. Pankaj Gupta, Advocate, for the Petitioner; Mr. Alok Singh, Advocate, for the Respondent

Final Decision: Disposed Off

Judgement

Mr. Jayant Nath, J. (Oral)—By the present petition, the petitioner seeks to impugn the order dated 04.05.2016 by which an application under Order 12, Rule 6 CPC filed by the petitioner/plaintiff was dismissed.

2. The petitioner has filed the present suit for ejectment/possession, recovery of money, mesne profits, damages, etc. for the property being first Floor, House No.1/10912, Gali No. 6, Subhash Park, Naveen Shahadara, Delhi. It is averred that the said property was given on lease to the respondent/defendant on a monthly rent of Rs. 11,000/-. Police verification for inducting the respondent as a tenant was done on 08.06.2014. The tenancy was for a period of 11 months. It is urged that the respondent failed to pay the agreed rent with effect from 08.02.2015 and also failed to pay the charges towards consumption of water and electricity. Reliance is placed on an undertaking/commitment which the respondent allegedly made in the letter dated 21.06.2015 witnessed by two citizens where he undertook to vacate the premises by 10.07.2015. The petitioner thereafter sent a legal notice dated 04.09.2015 calling upon the respondent to vacate the suit premises which notice is

said to have been served on the respondent. Hence, the present suit.

3. The defendant/respondent filed his written statement. In the written statement, the relationship of landlord and tenant is admitted. It is further stated that the defendant/respondent gave a security amount of Rs. 5 lacs to the petitioner at the time of taking the premises on rent and that the petitioner had promised to refund the security when the respondent would vacate the premises. The petitioner also assured that he would not charge the rent for the tenancy in view of the security of Rs.5 lacs.

4. The petitioner thereafter filed the present application under Order 12, Rule 6 CPC seeking a decree on admission.

5. The trial court by the impugned order noted that there is no dispute regarding the relationship of landlord and tenant. However, on the rate of rent, it noted that the parties are at variance i.e. the petitioners claiming a monthly rent @ Rs.11,000/- p.m. whereas the respondent stating that the payment of Rs.5 lacs has been made to the petitioner at the time of taking premises on rent. Hence, in pith and substance, the trial court has concluded that it is a case of one party''s oral version pitted against by word of mouth of his adversary. On the issue of undertaking dated 21.06.2015, it concluded that the respondent does not admit execution of the receipt and that there is no clear or unambiguous admission on behalf of the respondent regarding the monthly rent. The trial court concluded that as there are disputed questions of fact such as rate of rent, execution of receipt dated 21.06.2015 which mandate trial and dismissed the application.

6. Learned counsel for the petitioner has taken me through the plaint and the written statement to contend that there is no denial of the averments of the petitioner and the trial court has wrongly dismissed the application under Order 12, Rule 6 CPC. Regarding the undertaking dated 21.06.2015, it is urged that in the written statement the execution of the same is not denied. It is further stated that the issue of landlord and tenant is not in dispute. In fact, reliance is placed on order dated 03.12.2015 of the trial court where a submission of the learned counsel for the respondent is noted that the respondent is residing in the property as a tenant. He further submits that the respondent to improve his case in the written statement filed before the trial court has now claimed that the tenancy was created on a mortgage basis since the respondent had paid Rs.5 lacs in advance and in lieu of that advance, the respondent did not have to pay rent.

7. Learned counsel appearing for the respondent has strongly denied that there are any admissions. He submits that petitioner himself had taken the security of Rs. 5 lacs and has not given an acknowledgment for the same. In case the petitioner were to refund the said sum of Rs.5 lacs, he submits, the respondent would gladly vacate the suit premises. He has stressed that in the written statement there has been a complete denial of the averments of the petitioner including having given an

undertaking to vacate the suit property in a document dated 21.06.2015 as claimed. He stresses that as per the agreement between the parties the respondent should continue to occupy the property till the petitioner refunds the security amount. He has also claimed that there was a mortgage of the property in favour of the respondent. Learned counsel has also relied upon the judgment of the Supreme Court in the case of **S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287**, **Narayan Vishnu Hendre & Ors. v. Baburao Savalaram Kothawale (thr. LRs.), AIR 1996 SC 368** and **Gopalan Krishnankutty v. Kunjamma Pillai Sarojini Amma & Ors., AIR 1996 SC 1659** to support his contention.

8. Order 12, Rule 6 CPC reads as follows:-

"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 an 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. Catena of judgments of this court and the Supreme Court have settled the requirement of Order 12, Rule 6 i.e.:

(i) **Vijay Mayne v. Satya Bhushan Kumar 142 (2007) DLT 483(DB)**

(ii) **Usha Rani Jain v. Nirulas Corner House Pvt. Ltd. 73 (1998) DLT 124**

(iii) **Bhupinder Singh Bhalla v. Neelu Bhalla@Neelam Singh 2014 (207) DLT 5872**

(iv) **Himani Alloys Ltd. v. Tata Steel Ltd. 2011 (3) RCR (civil)**

10. Reference may be had to judgment of this Court in the case of Usha Rani Jain v. Nirulas Corner House Pvt.Ltd(supra) where in paragraph 18 the Court held as follows:-

"18. The object of Order 12, Rule 6 CPC is to enable a party to obtain a speedy judgment, at least, to the extent of the admissions of the defendant to which relief the plaintiff is entitled to. The rule permits the passing of the judgment at any stage without waiting for determination of other questions. It is equally settled that before a Court can act under Order 12, Rule 6 , the admission must be clear, unambiguous, unconditional and unequivocal. Admissions in pleadings are either actual or constructive. Actual admissions consist of facts expressly admitted either in pleadings or in answer to interrogatories. In a suit for ejectment, the factors which deserves to be taken into consideration in order to enable the Court to pass a decree of possession in favour of the plaintiff primarily are:-

A. 1) Existence of relationship of lessor and lessee or entry in possession of the suit property by defendant as tenant;

B. 2) Determination of such relation in any of the contingencies as envisaged in Section 111 of the Transfer of Property Act."

11. Admissions can be inferred from vague and evasive denials or admissions can even be inferred from the facts and circumstances of the case.

12. Coming back to the facts of this case. As far as the relationship of landlord and tenant is concerned, as noted by the impugned order in para 3 of the written statement, the respondent has clearly admitted being a tenant of the petitioner.

13. We may also look at the averment regarding the undertaking dated 21.06.2015. The undertaking states that the respondent agreed to vacate the property by 10.07.2015. In para 7 of the plaint, the petitioner makes an averment about the execution of the said document dated 21.06.2015 and an undertaking to vacate by 10.07.2015. The respondent has given a reply in para 7 of the written statement as follows:

"7. That the contents of para No. 7 of the suit are wrong and denied. It is submitted that the averments made in para under reply are after thought and frivolous only to mislead and misguide this Hon''ble court. It is submitted that there was no alleged undertaking/commitment by the defendant in written letter dated 21.06.2015. It is submitted the defendant is very much aggrieved from the illegal conduct of the plaintiff and he tried his best efforts to harass the defendant in all manners. It is submitted that the plaintiff has disconnected the electricity supply of the tenanted premises in collusion with the officials of concerned electricity department due to which the defendant and his family members including the minor children and parents are suffering several problems, although the father of the defendant is a heart patient and suffering from various old aged ailments due to the non availability of electricity."

14. Clearly, the respondent only denies the contents of para 7 of the plaint. He does not deny execution of the said document dated 21.06.2015. He merely submits that there is no alleged undertaking/commitment given by the respondent in the letter dated 21.06.2015. Having not denied the signatures on the said letter dated 21.06.2015, the issue arises whether the said letter contains an undertaking to vacate. The relevant part of the letter dated 21.06.2015 reads as follows:-

".. .As per present settlement, second party shall vacate the property of First Party on 10.07.2015 in lieu of First Party has fore gone rent of Rs.55,000/- due and payable by Second Party. ..."

Hence an undertaking to vacate the property by 10.07.2015 by the respondent is clear from the document/undertaking dated 21.06.2015.

15. The only issue that survives now is regarding the alleged oral agreement on the basis of which the respondent claims that he is entitled to continue to occupy the property till he receives the said security amount back. A perusal of the written statement filed shows that the only alleged understanding as claimed by the respondent is that he has given a security amount of Rs.5 lacs to the petitioner at the time of taking the premises on rent and the petitioner has promised to refund the security at the time when the defendant vacates the premises. There is no averment in the written statement regarding any alleged mortgage which is sought to be contended.

16. Merely because as per the respondent the petitioner is holding some security amount cannot be a ground to continue to occupy their premises after the petitioner has validly terminated the relationship of landlord tenant which is reflected in the document dated 21.06.2015 and legal notice dated 04.09.2015, receipt of which is not denied. Non refund of the alleged security cannot be a basis to continue to occupy the tenanted premises ad infinite.

17. Regarding the claim of mortgage as made by the respondent, the written statement does not state about any alleged mortgage. This proposition is for the first time propounded by the respondent in written submissions filed before the trial court where it was claimed that the tenancy has been created on mortgage basis since the respondent has paid Rs.5 lacs in advance and in lieu of that advance the petitioner has not been taking rent from the respondent. Averments which are not part of the pleadings cannot be taken into account. Reference in this context may be had to the judgment of the Supreme Court in **Ram Sarup Gupta by LRs v. Bishun Narain Inter College and Others, (1987) 2 SCC 555.**

18. Coming to the judgment of the Supreme Court in the case of S.M. Asif v. Virender Kumar Bajaj(supra), which has been relied upon by the learned counsel for the respondent. The facts of that case are entirely different. In that case it was averred that the tenant has entered into an agreement to sell with the landlord and paid an advance of Rs. 82.50 lacs vide six payments and that the landlord is said to have issued six receipts acknowledging the receipt of the money. It is on those circumstances where the landlord had executed receipts evidencing receipt of Rs. 82.50 lacs that the Supreme Court held as follows:

"8. The words in Order 12, Rule 6 CPC "may" and "make such order..." show that the power Under Order 12, Rule 6 CPC is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the Court. Where the Defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion Under Order 12, Rule 6 CPC. The said rule is an enabling provision which confers discretion on the Court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent''s claim.

19. The above judgment will not apply to the facts of this case.

20. The other two judgments relied upon by the learned counsel for the respondent pertain to the issue of mortgage which also do not apply to the facts of the present case.

21. The impugned order has wrongly concluded that there is no admission on record which warrants passing of a decree under Order 12, Rule 6 CPC. The trial court has failed to exercise jurisdiction vested in it by law. The impugned order suffers from material illegality. The impugned order is set aside and the petition is allowed. A decree is passed in favour of the petitioner and against the respondent for possession of the suit property. For the other reliefs claimed in the plaint, the trial shall continue. It may, however, be clarified that the respondent is free to take steps as per law for recovery of the alleged security amount which he claims has been given to the petitioner.

22. With the above observations, the petition stands disposed of.