

(2008) 01 DEL CK 0229

Delhi High Court

Case No: CS (OS) 1382 of 2007

Mr. Rane Prakash and Others

APPELLANT

Vs

N.R. Buildcon Private Limited

RESPONDENT

Date of Decision: Jan. 23, 2008

Acts Referred:

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

Citation: (2008) 2 ILR Delhi 204

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: N.N. Aggarwal and Mritunjay Kumar Singh, for the Appellant; Neelam Rathore, for the Respondent

Final Decision: Allowed

Judgement

S. Ravindra Bhat, J.

LA. 12641/2007

1. This order will dispose of an application under Order XII Rule VI CPC moved by the plaintiff.

2. Brief facts necessary for the purposes of this order are that the plaintiff filed the above suit claiming a decree of possession and mesne profit from the defendant. The averments are that the plaintiffs executed a registered lease deed on 26.6.2006 effective for three years from 10.7.2006 for property being 1st Floor, 72, Janpath, New Delhi (hereafter called "the suit property"). It is alleged that in terms of the lease deed, the defendant agreed to pay Rs. 110/- per square feet per month as rent aggregating to Rs. 2,31,550/- per month (which had to be paid in advance on or before the 10th of each calendar month). In terms of the lease deed, the defendant handed over 36 post dated cheques to the plaintiff. It is claimed that according to the terms of the lease deed if any cheque were dishonoured, the lease stood

automatically terminated and the lessee had to hand back vacant and peaceful possession of the property, to the plaintiff. The plaintiff-applicant alleges and relies upon its statement in the suit that the tenancy was automatically terminated when cheques issued by the defendant towards monthly rents were dishonoured on their presentation. Though not obliged to do so the plaintiff applicant issued a legal notice dated 30.3.2007 stating that the tenancy was terminated w.e.f. 21.3.2007 and calling upon the defendant to hand over vacant and peaceful possession.

3. The counsel for the plaintiffs submits that the written statement filed on behalf of the defendant, contains admissions regarding execution of the registered lease deed dated 26.6.2006 and its being inducted in the premises pursuant to the document. It is urged that the defendant also admitted that the lease was for three years commencing from 10.7.2006 and was to end by efflux of time on 10.7.2009. It is claimed that the defendant has in the written statement also admitted the consequence of dishonour or non-payment of cheques issued towards monthly rents being dishonoured or returned un-paid and further there was delay in the payment of rent. It is claimed that the defendant had not denied receipt of the legal notice dated 30.3.2007 communicating about automatic termination of the lease deed on 23.1.2007 in terms of Clause 1(f) of the lease deed. In these circumstances, it is stated that in all material particulars, the facts on record are sufficient to pass a decree for possession through the admissions of the defendant.

4. The defendant which resists the application avers that there is no unequivocal and clear admission by it. It is alleged that admission of the defendant is a qualified one upon which no judgment can be delivered decreeing the suit in part. Defendant relies upon contents of its written statement, denying receipt of the notice dated 30.3.2007. Without prejudice to this denial it contents that the plaintiff decided to present the cheques for encashment towards the rent and accepted amounts for the month of April; this amount to deemed acceptance of rent after notice. The defendant had adverted to its averment in the written statement that the paramount lessor i.e. the Government of India re-entered the suit premises much prior to execution of the lease deed dated 26.6.2006 and thus the plaintiff played a fraud on it. According to the defendant in the reply as well as in the written statement the plaintiff have no right to receive the rent or laid any claim in respect of the suit property.

5. The defendant denies that the plaintiff is entitled to possession of the property in the manner sought for at all.

6. Mr. N.N. Aggarwal, learned Counsel submitted that the averments in the written statement and the materials on record taken as a whole are sufficient to enable the Court to decree the suit in part under Order XII Rule 6 CPC. He submitted that the principal elements necessary for the decree of possession are existence of the lease; execution of the registered deed; the contents of the documents, particularly, the condition (clause 1(f)) agreed upon by the parties whereby in the event of

nonpayment of the rent for any month, the lease gets terminated; the averment with regard to the dishonour of the cheques and also averment regarding receipt of notice, have never been disputed. Reliance was placed upon the documents such as the lease deed, the legal notice dated 31.3.2007 and documents evidencing dishonour of the cheques, i.e. the cheques issued on the Canara Bank for the month of January 2007, February 2007, March 2007, May 2007, June 2007, July 2007 submit that each of those cheques were not honoured. The memorandum/documents, containing endorsement by the bankers indicating that the cheques were not honoured, due to insufficiency of funds, were also relied upon. It was submitted that in these circumstances, on a broad and overall consideration of the pleadings and materials, the only reasonable inference which this Court should draw is that the lease stood terminated in terms of Clause 10(f). Counsel contended that this position has been admitted by the defendant.

7. It was also contended that the defendant cannot in the proceedings raise questions regarding the title or possession of the plaintiff applicant since it admittedly entered the premises as a tenant. Counsel relied upon the order of this Court dated 29.10.2007 in LA. No. 12345/2007 where this Court declined to extend the time granted for depositing rents for the period May to September. Counsel, therefore, submitted that apart from the rival pleadings on record in the suit and in this application the plaintiff has been able to establish that the defendant has acted contrary to the lease and in terms of Order XII Rule 6 a decree has to be granted. He relied upon the judgment of this Court reported as [Mrs. Purnima Dhawan and Another Vs. Agmoz Online Pvt. Ltd.](#), to say that in such circumstances where the defendant occupier/tenant does not deposit amounts for continuing in possession of the premises, its defence in the suit itself would be struck off.

8. Ms. Neelam Rathore, learned Counsel for the defendant relied upon the averments and submitted that taken together they cannot be construed as an unequivocal and unambiguous admission of the material averments in the plaint. Learned Counsel submitted that the plaintiff did not possess title much less any legal right in respect of the property and thereby played a fraud upon it. These facts were specifically averred in the written statement. Learned Counsel urged that the defendant has also counter claimed against the plaintiff for a sum of Rs. 41,91,040/- . She relied on para 12 of the counter claim to say that a substantial amount of Rs. 35,02,590/- was spent by the defendant towards renovation, repairs and fitness in the property. In addition, the defendant was also entitled to refund of security deposits of Rs. 13,89,300/- .

9. Learned Counsel relied on averments in the written statement and submitted that according to the defendant the property belongs to the Union of India, with issuance of the re-entry order and the plaintiff cannot derive any right, title or interest to the property. It is also urged that despite the plaintiffs being informed not to present the cheques for want of funds, it proceeded to do so and thereafter

the plaintiffs accepted pay orders towards the rent. In these circumstances, several disputed questions of fact which require a proper trial have been raised. Learned Counsel contended that these facts dis-entitle the plaintiff to the decree sought in terms of Order XII Rule 6 CPC.

10. Ms. Rathore next relied upon the decision reported a [Bharat Sales Ltd. and Another Vs. Smt. Lakshmi Devi and Others](#), and submitted that wherever tenanted premises are re-entered by the paramount lessors such as the Union of India, the appropriate order would not be to direct possession in favour of the lessee but to grant possession to such paramount or superior lessor.

11. The terms of Order XII Rule 6 CPC clothe the Court with power to decree the suit to the extent an admission is made by the defendant. The power is discretionary; it can be exercised on an examination of the pleadings and other materials appearing on the record. The admission in order to be relied upon for a decree, however, has to be unequivocally clear and positive Refer: [Balraj Taneja and Another Vs. Sunil Madan and Another](#), . The admission must be specific. The authorities have emphasized on a fine distinction between the specific admission on the one hand and vague averments of facts, which if proved, could tantamount to admission by the party making it. The Court has to weigh the need for granting a decree on admission in the first category i.e. unambiguous admission and should normally decline the relief in the latter category.

12. If one examines the pleadings i.e. averments in the suit and the written statement closely, the defendant has not denied the following facts:

1. Execution of the lease deed;
2. The existence of Clause 1(f) which states that the lessee (defendant) handed over 36 post dated cheques towards rent of the premises covering the entire period. The specific averments in the plaint i.e. para 5 embody that clause which states that in case any of the cheques either being dishonoured or returned un-paid by the banker of the lessor, the lease deed shall automatically cease and stand remanded. The defendant has admitted the existence of the clause;
3. In answer to the allegation about default, the defendant, in para 8 of the written statement has not disputed that some payments were delayed; its explanation is that there was a bona fide financial crisis;

13. The plaintiff has averred about issuance of notice dated 30.3.2007 intimating about the dishonour of cheques resulting in termination of the lease. In reply, the defendant in the written statement, has alleged fraud on account of the re-entry order. As far as the receipt of notice is concerned, the defendant alleges that "is a manifestation of the threatened action of the plaintiffs. To avoid any criminal action, as threatened by the plaintiffs, the defendant gave order in lieu of dishonour cheques for March and April 2007.

14. The contention on behalf of the defendant was that the averments do not amount unambiguous or clear admissions. The defendant has relied upon its counter claim whether a sum in excess of Rs. 49 lakh has been claimed from the plaintiffs by it on account of renovation, repairs etc. as well as other amounts. In addition, it is urged that due to issuance of a re-entry order, the plaintiffs' title to the property is under a cloud; besides the issue of fraud regarding plaintiffs title itself, it is contended, is a triable issue. It has also been contended that the acceptance of further amounts for later periods amounts to waiver of notice dated 30.3.2007 by the plaintiffs.

15. Now, in order to determine whether the alleged admission is clear and unambiguous the Court has to examine averments as a whole. Undoubtedly, the defendant has disputed plaintiffs title and alleged fraud against it but that does not itself render the averments made in the other parts of the written statement unambiguous. The question of entitlement of defendant to recover amounts from the plaintiffs for the amounts due is a separate issue and can be gone into in the counter claim. That cannot prevent the Court from considering whether other parts of the written statement contain clear admissions entitling the plaintiffs to a decree on admissions.

16. The material averments and particulars so far as they concern the claim for decree of possession in the opinion of the Court, are the averments relating to execution of the documents; existence of Clause 1(f); allegation regarding dishonour of cheques/non-payment of amounts resulting in automatic termination of the lease and issuance of notice. Each of these elements or averments have not been denied. On a overall consideration of the written statement what appears is that these basic facts have not been disputed by the defendant. Its defence appears to be that the plaintiff did not disclose the alleged defect in the title and that the plaintiffs allegedly waived the notice by accepting rents/amounts for subsequent periods.

17. As far as the objection with regard to the title is concerned, this Court is of the opinion that the same is without any substance. It is well established in a series of judgments commencing from *Bilas Kumvar v. Desraj Ranjit Singh* AIR 1915 PC 96 down to the recent decision of the Supreme Court in [Bhogadi Kannababu and Others Vs. Vuggina Pydamma and Others](#), that a tenant let into possession cannot deny his landlord's title howsoever defective so long as he has not openly restored possession or surrendered the premises to his landlord. In view of this settled legal position, this Court is of the opinion that the objection about the alleged cloud of the title in the plaintiffs cannot disentitle it to a decree on admission. The Court is also of the opinion that the decision cited on behalf of the respondent defendant i.e. *M/s. Bharat Sales Ltd.*(supra) cannot apply to the facts of this case.

18. So far as the objection to the alleged acceptance of rents/amounts for later periods are concerned, this Court is of the opinion that there is no merit in that submission too. The defendant has not denied receipt of the notice; it is even

averred that there was delay in the payment of rents. The order dated 1st October, 2007 records that rent for the months of May, June, July, August and September were not paid and that the cheques were dishonoured. The defendant sought extension of time to pay the amounts by moving LA. 12345/2007; which was dismissed. In these circumstances, the Court is of the opinion that this argument is not available so far as the defendant is concerned. Further as held by a Division Bench of this Court in [Central Bank of India Vs. Shri Lalit Kumar Bhargava \(HUF\)](#), no rule or provision was brought to the notice of the Court in support of the submission that where the pleadings disclose clear admissions, entitling the plaintiff to a decree on admission, such alleged conduct of the plaintiffs can nevertheless be subject to examination, for denying it or decree under order XII Rule 6.

19. In view of the above discussion, this Court is of the opinion that the plaintiffs are entitled to a decree on admissions. The application is accordingly allowed. A decree of possession as claimed in para 23(a) of the relief clause in the suit is hereby granted in favour of the plaintiffs and against the defendant.