
(1999) 08 DEL CK 0124

Delhi High Court

Case No: Civil Revision No. 1132/98

Mohan Prasad Jha

APPELLANT

Vs

Shri Shambhu Prasad
Singh

RESPONDENT

Date of Decision: Aug. 12, 1999

Citation: (1999) 6 AD 480 : (1999) 82 DLT 281 : (1999) 49 DRJ 93 : (1999) 2 ILR Delhi 264 :
(2001) 1 RCR(Civil) 142 : (2000) 2 RCR(Rent) 601

Hon'ble Judges: Dr. M.K. Sharma, J

Bench: Single Bench

Advocate: Mr. B.B. Gupta, for the Appellant; Mr. Ajay Shankar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

DR. M.K. Sharma, J.

The present revision petition is filed by the petitioner plaintiff against the order dated 12.11.98 passed by the Additional District Judge, Delhi in Suit No. 306/97 dismissing his application filed under Order 12, Rule 6 read with Order 15, Rule 1 of the CPC for passing a decree of possession on the basis of admission against the defendant. It is said that the petitioner who is the plaintiff in the suit handed over possession of Flat No.119 , Tower-11, Supreme Enclave, Mayur Vihar, Phase-I, Delhi to the defendant by an oral agreement on license fee/charges for use and occupation @ Rs. 4,500/- per month exclusive of water and electricity charges. It is alleged in the plaint that the plaintiff failed to pay the aforesaid charges since March, 1996 whereupon the plaintiff served a legal notice dated 21.3.97 followed by another notice dated 7.5.97 being notice of demand and notice to quit u/s 106 of the Transfer of Property Act. As the defendant failed to vacate the premises the suit was instituted by the plaintiff for recovery of possession and mesne profit and damages.

2. In the written statement filed by the defendant he has given a statement as to how he has come into possession of the aforesaid flat. In the said written statement the

defendant has also given the details of the payments made by him to the plaintiff from time to time towards rent and/or charges for use and occupation of the aforesaid premises. According to him the plaintiff accepted rent after issuance the second notice amounting to waiver on the part of the plaintiff. It is also alleged by him that he has made payment towards rent by cash up to June, 2000 and, Therefore, the suit is liable to be dismissed. After filing of the aforesaid written statement by the defendant the petitioner-plaintiff filed an application under Order 12, Rule 6 of the CPC praying for a decree of possession in terms of the admission contained in the written statement. The aforesaid application was put up for arguments and by order dated 12.11.98 the Additional District Judge dismissed the application holding that there is no clear admission from the side of the defendant in his pleadings. While coming to the aforesaid conclusion the Additional District Judge appears to have been persuaded by the contention of the defendant that he is challenging the legality of the notice served upon him u/s 106 of the transfer of Property Act and also by the allegation of the plaintiff that he paid rent to the plaintiff up to June, 2000. Being aggrieved by the aforesaid order passed by the Additional District Judge the plaintiff-petitioner has preferred the present petition.

3. I have heard the learned counsel appearing for the petitioner as also the counsel appearing for the respondent and propose to dispose of the present petition in the light of the discussion made hereinafter.

4. In order to enable the court to pass a judgment and decree as provided for under Order 12, Rule 6 of the CPC the court has to come to the conclusion that there is clear and unequivocal admission of the defendant in respect of the claim/dispute. If the defendant is able to raise an issue which is required to be considered at the time of trial of the case, no decree could be passed in such a suit in the light of Order 12, Rule 6 of the Code of Civil Procedure. Accordingly the pleadings of the parties are to be scrutinised and considered to find out if a decree for possession on admission by the defendant could be passed in the present case.

5. On perusal of the records I find that the Additional District Judge dismissed the application because of the fact that the defendant challenged the legality of the notice served upon him u/s 106 of the Transfer of Property Act and also in view of the allegation of the defendant in his written statement that he had paid rent to the plaintiff up to June, 2000. By dismissing the application he has also taken note of the contention of the defendant that payment of rent was made to the plaintiff even after service of the notice and, Therefore, according to him the allegation that the notice was waived by the plaintiff needs to be sent for trial.

6. From the records it is disclosed that initially that plaintiff sent a legal notice terminating the tenancy under the provisions of Section 106 of the Transfer of Property Act on 21.3.77. Subsequently, however, another notice dated 7.5.97 was sent by the plaintiff to the defendant terminating the tenancy w.e.f. 31st day of May, 1997. In the subsequent notice it is stated by the petitioner-plaintiff that this notice supplements the earlier notice.

Service of the aforesaid notices on the defendant is not disputed. Only dispute raised by the defendant is that the said notice is not in accordance with the provisions of Section 106 of the Transfer of Property Act. It is also submitted that since subsequent notice supplements the earlier notice, Therefore, a dispute arises as to from which date the tenancy of the defendant was terminated. It is significant to note that the defendant did not send any reply to the notice dated 7.5.97 by the petitioner-plaintiff although it is admitted that it is served upon him.

7. I have perused the aforesaid notice dated 7.5.97 which is annexed as Annexure-B. From the contents of the said notice it is apparent that the plaintiff terminated the tenancy w.e.f. 31st May, 1997. The said notice, Therefore, is a notice issued u/s 106 of the Transfer of Property Act terminating the tenancy of the defendant w.e.f. 31st May, 1997 calling upon him to hand over vacant possession of the suit premises on to the plaintiff . It is not shown as to how the aforesaid notice is invalid. A perusal of the said notice indicates that the notice is in accordance with the provisions of Section 106 of the Transfer of Property Act terminating the tenancy in accordance with law. At this stage it is necessary to indicate that if the contention of the respondent -defendant that rent stands paid also accepted up to June, 2000 is found to be proved and established then it has to be held that tenancy could not have been terminated with effect from a date beyond which rent stands paid and accepted. The said issue is Therefore kept open to be decided subsequently.

8. Therefore, the first contention of the counsel appearing for the respondent that the notice is invalid does not have any merit at all subject to the aforesaid condition. The second contention of the learned counsel appearing for the respondent is that the petitioner has accepted payments even after service of the notice. In view of the aforesaid submissions and the statements made in the written statement I perused the records. I find that the defendant has categorically admitted in page 11 of the written statement, which is at page 42 of the paper book that after May, 1997 the defendant has not paid a single paise to the plaintiff except for making payment of Rs.1655/- against the charge for installation of electric connection in the name of the petitioner. The tenancy was terminated w.e.f. 31.5.97. Therefore, the admitted position is that no payment of rent was made by the defendant to the plaintiff for the period after termination of the tenancy. It, Therefore, cannot be said that the plaintiff accepted rent from the defendant after issuance of the notice to quit and, Therefore, the notice to quit cannot also be said to have been waived. In that view of the matter the ratio of the decisions in [Manicklal Dey Chaudhuri Vs. Kadambini Dassi](#), and Ram Dayal Vs. Jawala Prasad reported in AIR 1966 All 623 on which reliance was placed by the counsel appearing for the defendant is not applicable to the present case as the facts are distinguishable.

9. The respondent in his written statement contended, inter alia, that the defendant paid to the plaintiff in cash a total amount of Rs. 2,20,655/- which amount was paid in different installments and on different dates during the period from October, 1993 to May, 1997. It is also stated in the said written statement that the defendant paid the aforesaid amount

from his unaccounted money and thus rent to the plaintiff stands paid up to the month of June, 2000. At another place of the written statement it is stated that even if the rent is computed as claimed by the plaintiff @ Rs. 4,500/- per month the defendant paid the rent in advance of 51 months i.e. till February, 1998 commencing from December, 1993.

10. It is true as submitted by the counsel appearing for the petitioner that the aforesaid statements are not supported by any documentary evidence and no receipt showing payment of the total amount of Rs. 2,20,655/- is placed on record. However, in any case a factual dispute has been raised by the defendant in the written statement that the rent of the premises stand paid beyond the period with effect from the tenancy was terminated by the petitioner-plaintiff. The said issue gives rise to a triable issue and could be decided only after parties adduce evidence in respect of the same. Counsel for the petitioner seeks to submit that the aforesaid defense is only a moonshine defense and cannot be continents at all and in that view of the matter the suit should not be sent for trial. I, however, cannot agree with the aforesaid submission of the learned counsel appearing for the petitioner for the simple reason that in order to shorten litigation there is ample and sufficient provisions in the CPC which is available to the petitioner. However, in my considered opinion the provisions of Order 12, Rule 6 of the CPC cannot be resorted to cut short a litigation when factual disputes are raised between the parties and when there is no clear and unequivocal admission in respect of a particular fact in the written statement. As it is held herein that the aforesaid issue gives rise to a triable issue the issue regarding validity of notice shall also go to trial to the extent as to whether rent if paid and accepted till June, 2000 the tenancy between the parties could be terminated with effect from a date which is prior in point of time than the period to which said rent stands paid and accepted. Thus, the order of the Additional District Judge is upheld to the extent indicated above.

11. The petition stands dismissed in terms of the aforesaid order.