

Delhi High Court Parivar Seva Sansthan vs Dr.(Mrs.) Veena Kalra & Ors. on 7 July, 2000 Equivalent citations: 2000 VAD Delhi 534, AIR 2000 Delhi 349, 86 (2000) DLT 817, 2000 (54) DRJ 914 Author: S Agarwal Bench: D Gupta, S Agarwal ORDER S.K. Agarwal, J. 1. ADMIT. Learned counsel for the parties submit that the trial court record has already been called and the point involved is very short, therefore, the appeals may be disposed of at this stage itself. Accordingly by this common judgment we propose to dispose of these two appeals as same questions of fact and law arise for consideration. 2. These two appeals are directed against the judgments and decrees delivered under Order 12 Rule 6 of the Code of Civil Procedure (for short CPC) on 23rd December, 1998 by the court of Sh. B S Chaudhary, Additional District Judge, Delhi decreeing two suits, one for possession of basement and the other for possession of ground floor of the premises No.4, Vinoba Puri, Lajpat Nagar (for short, the suit premises), and for mesne profits at the last paid rent with 50% increase, along with Rs.2,300/- per month, on account of fittings and fixtures charges, with effect from September, 1996 till the date of handing over of the possession, in favour of the respondents (plaintiffs) against the appellant (defendant). 3. Facts giving rise to these appeals briefly are: that on 27.1.97 respondents(plaintiffs) filed two separate suits against the appellant (Defendant), seeking decrees of possession and mesne profits in respect of basement and ground floor of the suit premises, alleging therein that the plaintiffs had rented out the basement at Rs. 10,580/- per month and the ground floor at Rs.18,250/- per month w.e.f. 12.9.93 for a period of three years, by two registered lease agreements dated 12th May, 1994; and under two other agreements dated 26.7.93, the defendant was to pay Rs. 2,300/- per month for fittings and fixtures; the defendant was also to pay electricity and water charges as per the bills received; the defendant failed to pay the electricity charges from October, 1994 and started deducting the same from the rent. In 1995 the defendant violated the terms of the tenancy, and was called upon to hand over the vacant possession of the suit premises. On 25th May, 1996 a notice was served upon the defendant to vacate the premises. The tenancies also expired by efflux of time on 12th September, 1996; and telegraphic notices were also sent to the defendant on 8th September, 1996 requiring it to vacate the suit premises. It was pleaded that a sum of Rs.1,82,160/- for the basement tenancy and Rs.2,46,600/- for the ground floor tenancy was payable as arrears of rent and damages, till the date of filing of the suit. 4. After service of summons, the defendant (appellant) filed identical written statements, generally denied the averments made of each plaint and raised several preliminary objections: that it was in occupation as a tenant since 29.9.85; tenancy was not terminated in accordance with law and no notice of termination of tenancy, as contemplated under section 106 of the Transfer of Property Act, 1882, had been served upon it; the suit on the basis of the alleged lease deed dated 12.5.94, was not maintainable as there was no surrender of original tenancy, and the defendant continues to be a contractual tenant, in respect of the basement since 12.9.90 and in respect of the ground floor since 29.11.85. It was further pleaded that the lease deed dated 12.5.94, was never acted upon and was a sham document obtained for the purposes of taxation for the benefit of the plaintiffs; the

plaintiffs concealed the fact that there are two separate tenancies in respect of the ground floor and two separate tenancies in respect of basement. And that plaintiffs no.1 and 2 had separately been receiving one cheque each for basement tenancy and one cheque each for ground floor tenancy, in their individual names. Another objection was also taken that the suit for possession of the ground floor was without seeking possession of front and back court yards and bath room was not maintainable. Plaintiffs filed replication reiterating the averments made in the plaint, inter-alia pleading that upto March, 1995, cheques towards rent used to be given in the joint name of the plaintiffs and receipts used to be issued. However, the defendant started giving two separate cheques for the ground floor tenancy and two separate cheques for basement tenancy, in favour of the plaintiff No.1 and 2 respectively, and the same was received by plaintiffs in terms of the lease deed dated 12th May, 1994, without prejudice to their rights. 5. On 29.8.97 the trial court framed same set of issues in both the suits, which are: 1. Whether the defendant is a contractual tenant? If so, what is effect thereof? OPD

2. Whether the lease has been validly terminated or it stands terminated by efflux of time? OPD
3. Whether the suit is not maintainable in view of Sec. 53A of Transfer of Property Act? OPD
4. Whether the defendant is entitled to deduct the amount on account of electricity? OPD
5. Whether the suit of the plaintiff is not maintainable in view of pre-litigation objection taken by the deft? OPD
6. Whether the defendant is not liable to pay the amount as alleged in written statement? OPD
7. Whether the plaintiff is entitled for the amount as claimed? OPP
8. Whether the plaintiff is entitled for damages, as claimed and at what rate and for what period? OPD
9. Whether the plaintiff is entitled for the interest, as claimed and to what extent? OPD
10. Whether the plaintiff is entitled for possession as claimed in the plaint, as prayed for? OPD

11. Whether the plaintiff is entitled for decree of injunction, as prayed? OPP

12. Relief.

6. On 9th July, 1997 plaintiffs moved separate applications in both suits under order 39 Rule 10 of the CPC, praying for directions to the defendant, to pay and deposit the charges towards use and occupation of the suit premises. Trial court, vide orders dated 7.4.98 allowed the applications and directed the defendant, to pay use and occupation charges in respect of the suit premises. The defendant filed revision petition against the said order, however, the same was withdrawn on 12.5.99, after the suits were decreed.
7. In December, 1997 plaintiffs also filed applications under order 12 rule 6 read with order 20 rule 12 CPC, for decree of possession, of the tenancy premises on the basis of the alleged admissions in the written statements. The defendant filed reply contesting the same. The defendant during the pendency had also moved applications seeking leave to amend the written statements, however, these applications remained pending, as in the meantime the trial court allowed the plaintiffs' applications and decreed both the suits for possession as well as for mesne profits on 23.12.1998, by identical orders. Against these orders the appellant (defendant) has filed these appeals. We have heard learned counsel for the parties and have been taken through the record.
8. Learned counsel for the appellant argued that as the issues were already framed it was not permissible for the court to have proceeded with the applications under order 12 rule 6 of the CPC and to dispose of the suits without adjudication on the issues. Reliance was placed, on a decision of this court in Punjab National Bank & Anr. Vs. S. Kartar Singh: . We find no force in this contention in view of the explicit language of Order 12 rule 6 of CPC, which reads as under: Order XII (Admissions)
9. XXX
10. XXX
11. 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. Bare perusal of the above rule shows, that it confers very wide powers on the court, to pronounce judgment on admission at any stage of the

proceedings. The admission may have been made either in pleadings, or otherwise. The admission may have been made orally or in writing. The court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well established principles. Admission must be clear and unequivocal; it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part; even a constructive admission firmly made can be made the basis. Any plea raised against the contents of the documents only for delaying trial being barred by the section 91 and 92 of Evidence Act or other statutory provisions, can be ignored. These principles are well settled by catena of decisions. Reference in this regard be made to the decisions in *Dudh Nath Pandey (dead by L.R's) Vs. Suresh Chandra Bhattasali (dead by L.R's)* ; *Atma Ram Properties Pvt. Ltd. Vs. Air India* ; *Surjit Sachdev Vs. Kazakhstan Investment Services Pvt. Ltd.* 1997 II AD (Delhi) 518; *Abdul Hamid Vs. Charanjit Lal & Ors.* 1998 Vol.2 DLT 476 and *Lakshmikant Shreekant Vs. M N Dastur & Co.* .

10. The use of the expression “any stage” in the said rule itself shows that the legislature’s intent is to give it widest possible meaning. Thus merely because issues are framed cannot by itself deter the court to pass the judgment on admission under order 12 rule 6, CPC. The case of *PNB Vs. Kartar Singh (Supra)* runs into only two paragraphs without any discussion. Observations made in the case, referred to by the learned counsel, in support of his argument do not reflect any proposition of law. The order must have been passed on the facts of that case. Learned counsel for the appellant, next argued that there was no clear and unequivocal admission in the written statements and no finding on the issues framed could be recorded without trial. Reiterating the above principles in a recent decision, the Supreme Court in *Balraj Taneja & Anr. Vs. Sunil Madan & Anr.* , while considering the scope and ambit of the provisions of rule 6 of order 12 CPC observed: “23. Under this rule, the court can, at an interlocutory stage of the proceedings, pass a judgement on the basis of admissions made by the defendant. But before the court can act upon the admission, it has to be shown that the admission is unequivocal, clear and positive. This rule empowers the court to pass judgement and decree in respect of admitted claims pending adjudication of the disputed claims in the suit.
11. In *Razia Begum Vs. Sahebzadi Anwar Begum* it was held that Order 12 Rule 6 has to be read along with the proviso to Rule 5 of Order 8. That is to say, notwithstanding the admission made by the defendant in his pleading, the court may still require the plaintiff to prove the facts pleaded by him in the plaint.
25. Thus, in spite of admission of a fact having been made by a party to the suit, the court may still require the plaintiff to prove the fact

which has been admitted by the defendant. This is also in consonance with the provisions of Section 58 of the Evidence Act which provides as under:

“58. Facts admitted need not be proved.-No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the court may, in its discretion, require the facts admitted to be proved otherwise than by such admission.”

26. The proviso to this section specifically gives a discretion to the court to require the facts admitted to be proved otherwise than by such admission. The proviso corresponds to the proviso to Rule 5(1) Order 8 CPC.

27. In view of the above, it is clear that the court, at no stage, can act blindly or mechanically. While enabling the court to pronounce judgement in a situation where no written statement is filed by the defendant, the court has also been given the discretion to pass such order as it may think fit as an alternative. This is also the position under Order 8 Rule 10 CPC where the court can either pronounce judgement against the defendant or pass such order as it may think fit.

12. At this stage it would be useful to recall some factual contentions emerging from the pleadings: In 1995 the appellant/defendant was asked to vacate and hand over possession of the suit premises, on the ground of the violation of the terms of the lease; On 25th May, 1996 a notice was alleged to have been served upon the defendant, requiring it to vacate the premises, on 12th September, 1996, tenancy is alleged to have expired by efflux of time and on 8th September, 1996, telegraphic notices were also alleged to have been served upon the defendant. The defendant had pleaded that they were the contractual tenants in respect of the basement since 12.9.90 and in respect of ground floor since 29.11.85; that the lease deeds dated 12.5.94 were never acted upon and were sham documents; two tenancies existed in respect of the ground floor and two tenancies existed in respect of the basement and plaintiff Nos. 1 and 2 used to get separate cheques in their individual names, in respect of each of these portions. In fact, the plaintiffs did not deny the fact that they had been receiving the rent separately in their respective names, with regard to the ground floor and basement tenancies. However, it was pleaded that in 1995, the defendants started issuing two separate cheques in the name of each of the plaintiffs for their convenience. On the basis of these pleadings trial court, inter alia, framed specific issues that whether the defendant is a contractual tenant or not and whether the lease was validly terminated or was terminated by efflux of time?

13. The question whether the defendant became contractual tenant after 1995, when they were called upon to vacate the premises on the ground of alleged violation of the terms of the lease, and effect of the circumstances leading to the acceptance of the rent by the two plaintiffs individually in their respective names would require trial. These questions could not be determined without evidence and, therefore, it cannot be said to be a case of “unequivocal” and clear positive admission, which is an essential requirement of law for a decree on admission. Learned trial court instead of concentrating on the question that whether there was any admission on the part of the defendant or not in its pleadings or elsewhere, proceeded to adjudicate upon some of the issues on merits by observing that the pleas raised by defendant are unbelievable, which could not have been done. There being triable issues raised going to the root of the case, the trial court ought to have proceeded to try the suits and returned findings on merits. The impugned judgment and decrees are thus liable to be set aside and the suits deserve to be remanded for trial in accordance with law.
14. Since the matter is being remanded for trial, we deem it fit and expedient to order that the appellant shall pay to the respondents the arrears of rent and charges for fittings and fixtures payable under the agreements dated 12.5.94 and 26.7.93 between the parties in respect of the basement and the ground floor tenancies upto September, 1996 (the date on which the lease expired). And for the subsequent period the appellant shall pay to the respondents at the rate of last paid rent with an increase of 50% in respect of each of the tenancies towards damages for use and occupation charges alongwith Rs. 2,300/- per month on account of fittings and fixtures with effect from October, 1996, without prejudice to the rights of the respective parties and subject to the result of the two suits. The appellant shall continue to pay use and occupation charges at this enhanced rate, till the final disposal of the suit, by the 7th of each month. The arrears of rent and arrears for use of occupation charges, if any, be paid within two months.
15. In this case both the suits are between the same parties, and are in respect of the premises i.e., basement and ground floor. These are based on two separate lease agreements of the same date, common set of issues have been framed in both the suits therefore, both the suits ought to be consolidated and tried jointly to avoid multiplicity of proceedings and we order accordingly.
16. Before we part with the judgment, we would like to observe that after the judgment was reserved it was noticed that part of the trial court file of suit no.47/97 was not received along with record; only two pages of the plaint were available, and even the written statement was not on record. Similarly, file of the suit no. 48/97 was also not complete. Therefore, we had directed the Ahamed (record clerk), to be present. On 3.3.2000 M.K. Verma, record clerk of the court of Sh. B.S. Choudhary, ADJ appeared

and brought some loose papers. He was directed to file the same in the registry. Perusal of these papers reveal that at some stage papers from of the file of suit no. 47/97 were removed from the main file and were not placed back in the file. Further at page no. 9 of the plaint, in this suit, some figures appear to have been typed again after using white fluid. Copy of the original page no. 9 is also available on record. Other file was also not complete. It is a serious matter and calls for a proper enquiry. Therefore, we direct the trial court to hold an enquiry and take an appropriate action against the erring officials without delaying the disposal of the suit. In fact it ought to have been noticed by the trial court earlier. The trial court record be sent back in a sealed cover.

17. With the above directions, appeals are allowed with costs; impugned judgements and decrees are set aside. Suits are remanded for trial in accordance with law. Parties are directed to appear before the trial court on 28th July, 2000. Registry to issue necessary certificates to the appellant for refund of the court fees.