

Delhi High Court M/S. Atma Ram Properties (P) Ltd. vs M/S. Pal Properties (India) Pvt. ... on 23 April, 2001 Equivalent citations: 2001 VIIAD Delhi 131, 63 (2001) DLT 694 b, 2002 (62) DRJ 623 Author: A Sikri Bench: A Sikri ORDER A.K. Sikri, J. 1. The plaintiff has filed this Suit for recovery of possession of the property which is a showroom and bears Municipal No. H-72, Connaught Circus, New Delhi (hereinafter to be called as "suit property" for short). He has also claimed mesne profits alleging that defendants are in unauthorised occupation of the said property of which it claims to be the owner. In the plaint it is averred that Arya Dharam Sewa Sangh was the owner and landlord of the property in question (of H-Block) including premises No. H-72, Connaught Circus, New Delhi. The plaintiff had purchased this property from Arya Dharam Sewa Sangh vide Sale Deed dated 31.3.1994 which is registered with the Sub-Registrar at No 2253 additional Book No. 1, Volume 8223 on pages 1/249 dated 31.3.1994. Defendants 1 to 3 were the tenants of the suit property and a part of the same has been sub-let to defendant no 2. The tenancy of defendants 1 to 3 has been a monthly tenancy which commenced on 26th day of each English calendar month and expired on the expiry of 25th day of succeeding English calendar month. It is mentioned in the plaint that defendants 1 to 3 took the premises on rent vide Registered Lease Deed which expired by efflux of time on 27th may, 1989 as the same was for a period of 114 months commencing from 26.11.1979. No fresh lease deed was executed between the predecessor in title of the plaintiff or with the plaintiff. Therefore, defendants became the tenant by holding over. Defendants had sub-let the part of premises to defendant No. 4 at a monthly rent of Rs. 24,701.75. Plaintiff served notice dated 11.7.1997 upon the defendants under Section 106 of the Transfer of Property Act terminating the tenancy of the defendants on the expiry of 25th day of August, 1997 asking defendants to vacate the premises. However, as the premises were not vacated present suit for possession has been filed. Damages/mesne profits amounting to Rs. 5 lakhs are claimed for the period from 26.8.1997 to 25.9.1997. Defendants 1 to 3 on the one hand and the defendant No. 4 on the other filed separate written statements. In the written statement filed on behalf of defendants 1 to 3 a number of preliminary objections are taken. It is contended that suit is barred under the provisions of Section 50 of the Delhi Rent Control Act as the rent of the premises payable by defendants 1 to 3 is only Rs. 1400/- per month which is much less than Rs. 3,500/-. They have also stated that suit proceedings are liable to be stayed under Section 10 of Code of Civil Procedure as the similar proceedings for eviction in respect of same premises are pending adjudication before the Court of Additional Rent Controller, Delhi being case No. 21/1994 where the matter in controversy is directly and substantially the same as in the present suit. ownership of plaintiff is denied submitting that there is no relationship between plaintiff-landlord and defendants 1 to 3. Receipt of notice dated 11th July 1997 sent under Section 106 of the Transfer of Property Act is also denied. It is also stated that tenancy created by plaintiff in favor of these defendants has not come to an end which could be determined only by an order passed by Rent Controller on any of the grounds enumerated under Section 14 of the Delhi Rent Control Act. In the

written statement filed on behalf of defendant No. 4 somewhat similar pleas have been taken. Additionally it is stated that defendant No. 4 is tenant of defendant No. 1 at a monthly rent of Rs. 24,701.75 paise and, therefore, the plaintiff has no right to file any such suit. The plaintiff filed replications to both the written statements controverting the various pleas taken by defendants 1 to 4 in their respective written statements. 2. At this stage the plaintiff has filed this IA. 6729/2000 under the provisions of Order XII Rule 6 of the Code of Civil Procedure read with Order XX Rule 12 and Section 151 CPC in which it is prayed that this Court may pass the decree of eviction against defendants in respect of suit premises as the main ingredients necessary for passing such a decree stand admitted by the defendants. It is further stated that some of the denials made in the written statements filed by the defendants are malicious and misconceived which in any case do not require any trial, inasmuch as law on such issues stands settled by series of judgments. On the other hand it is submitted on behalf of defendants that the application under Order XII Rule 6 CPC is not maintainable since there are disputed facts and contentious issues which require exhaustive and extensive trial where evidence has to be led by both the parties. In order to succeed in a suit for possession the plaintiff has to prove the following ingredients: 1. That there is a relationship of landlord and tenant between the parties. 2. Tenancy in respect of the premises has come to an end either by efflux of time or by a valid notice sent by the plaintiff to defendants under Section 106 of the Transfer of Property Act and duly served on the defendants. 3. The rent of the premises in question is more than Rs. 3,500/- PM and, therefore, there is no protection of the provisions of Delhi Rent Control Act available to the tenants. 3. Even the plaintiff admits in his application for leave to defend that there is a dispute on all the aforesaid aspects as defendants have put up their defense on these issues and are contesting the same. However, the submission of learned counsel for the plaintiff is that denials on these aspects are superficial and of no legal consequence when these are examined with reference to legal position. The submissions of the learned counsel for the plaintiff on these aspects are as under: No. 1. That there is a relationship of landlord and tenant between the parties. 4. With regard to denial of relationship of plaintiff-landlord and defendants 1 to 3, it is urged that such an objection is taken more as a matter of routine and for the sake of taking the objection. Otherwise the plaintiff has filed the certified copy of the Registered Sale Deed dated 31.3.1994 in this Court which shows that plaintiff has purchased the property in question from Arya Dharam Sewa Sangh. Further in the other litigation between the plaintiff and defendants 1 to 3 the plaintiff was substituted in place of Arya Dharam Sewa Sangh on the basis of this very Sale Deed. For instance in case No. 21 of 1994 pending before the Additional Rent Controller which was filed by Arya Dharam Sewa Sangh against the defendants, the plaintiff got its name substituted under Order XXII Rule 10 of CPC vide application dated 21.2.1995 which was allowed vide order dated 29.3.1995 which order has become final. Similarly in other case being Suit No. 377/91 pending before Civil Judge, Delhi filed by Arya Dharam Sewa Sangh against the defendants, the present plaintiff was substituted in place of said Sangh vide order dated 8.3.1996. Counsel for

the defendants 1 to 3 had made a statement that he had no objection for the said application. Similar substitution took place in Suit No 633 of 1995 filed by Sangh i.e. the previous owner against these defendants. In all these cases plaintiff was substituted on the basis of Sale Deed dated 31.3.1994 and the defendants had not denied that Sangh did not remain owner and landlord of the premises any longer. Therefore, according to the plaintiff it was a sham plea taken by the defendants to delay the proceedings. 5. As far as defendants are concerned, defense on this plea is that in the present suit the plaintiff has yet to establish the acquisition, right, title and interest in the suit premises which can be only by way of evidence and till that is decided, no orders under Order XII Rule 6 CPC can be passed. It is further stated that defendants have not accepted the plaintiff as their landlord. 6. I do not think the defense led by the defendants have any legal force. It would have been a different thing if the defendants had denied the sale of the suit premises by Sangh to the plaintiff. May be in such circumstances the plaintiff would have been required to prove its ownership of the premises and successor of the property in question. Much water has flown since then. This very sale deed has been acted upon in at least three proceedings mentioned above. In all these proceedings instituted by Sangh against these very defendants, the plaintiff stands substituted in place of Sangh on the basis of this very Sale Deed dated 31.3.1994. These orders have become final. Defendants at nowhere challenged these orders on the ground that the plaintiff had not purchased the property or had not become the owner of the suit property in question. On the contrary in Suit No. 377/91 order dated 8.3.1996 substituting the plaintiff in place of Sangh was passed when counsel for the defendants 1 to 3 made a statement that it had no objection for the said substitution. It does not lie in the mouth of the defendants now to deny the existence of sale deed dated 31.3.1994 or to insist on proving such a sale deed by leading evidence. 7. No. 2 Tenancy in respect of the premises has come to an end either by efflux of time or by a valid notice sent by the plaintiff to defendants and duly served on the defendants. 8. Insofar as the plea of the defendants that the lease still subsists, the admitted facts are that lease deed entered into between the previous owner i.e. Sangh and defendants 1 to 3 is dated 26.11.1979. this was for 114 months which period expired on 27.5.1989. Admittedly, there has not been any fresh lease deed executed between the parties thereafter much less registered lease deed. Whether in these circumstances it can be said that lease stood renewed in terms of Clause-II of the said lease deed which deals with renewal. The answer is emphatic no. This conclusion is supplied by the terms of Clause-II of the lease deed itself which reads as under: "Clause-II. That this lease has been initially granted for 114 months. If the tenants shall be desirous of renewing this lease, and shall give powers thereon any time before the expiry of the agreed period of 114 months, then the landlord undertakes to grant the renewal of lease for a further period of 114 months on the same terms and conditions as herein recorded including this clause for renewal. However, each such renewal for lease shall be made by separate stamped and registered lease subject to an increase of rent by 20% and all the expenses for stamps and registration shall be exclusive liability of the tenant". 9. This clause

itself stipulates that the new lease, after renewal, would come into existence when the same is made by separate stamped and registered lease. As aforesaid, admittedly, no such lease deed was executed on separate stamped paper and was registered. Therefore, in law there was no renewal of the lease deed. This is the position which otherwise also stands established by catena of judgments and admit of no doubts. (Ref: Bhagabandas Agarwalla, Vs. Bhagwandas Kanu and others , Smt. Chander Kanta Singhal Vs. M/s. Kapadia Exports 1996 V AD (DELHI) 108 and Capital Boot House & Ors. Vs. Intercraft Limited . 10. It is tried to be argued by the defendants that when the aforesaid lease was expiring the defendants had requested Sangh on 11.1.1989 for extending the lease deed for a period of 114 months. Sangh did not deny the extension and, therefore, lease deed is deemed to have been extended for a period of 114 months i.e. up to 25.11.1998. It is also stated that Sangh continued to receive rent from the defendants as late as 1995. It is also stated that defendants once again vide letter dated 23.11.1998 exercised its sole option seeking extension of another 114 months and therefore the lease stands extended up to 25.5.2008. Even if it is accepted that defendants had written these letters, it would not alter the legal position, namely, no such extension was there in the absence of execution and registration of fresh lease deed in view of the judgments quoted above. 11. The defendants 1 to 3 claim to have filed Suit for specific performance against Sangh which is pending in the Court of Shri Sunil Gaur, Additional District Judge, Tis Hazari, Delhi seeking specific performance of formal lease deed in respect of this tenancy. This suit is admittedly filed much after the filing of the present suit for possession. When the period of lease deed dated 26.11.1979 expired on 25.5.1989 and when in the absence of execution of any fresh lease deed there was no extension., how such a suit could be filed after the period of more than 10 years of the expiry of earlier lease deed is a question to which defendants could not give any answer. Obviously the suit is filed at this belated stage which is ex-facie time barred, with sole purpose to make out semblance of a dispute in the present proceedings. The filing of such a suit, therefore, would not come in the way of the plaintiff in prosecuting the present application under Order XII Rule 6 CPC. There is yet another factory which is worth mentioning as that also stares at the face of defendants defense. As per the lease deed, renewal was on the condition that the existing rent of Rs. 1400/- was to be enhanced by 20%. However, there was no such enhancement at the rate of 20% after the expiry of the lease agreement. The rent even today is only Rs. 1540/- PM. Similarly, there is no such increase in rent after the expiry of another 114 months. How the defendants, in such circumstances, claim that the lease deed extended by another period of 114 months i.e. up to 25th May, 2008? Therefore, the tenancy in question became month to month tenancy after the expiry of lease period i.e. 25th May, 1989. Such a lease could be terminated by serving notice under Section 106 of the Transfer of Property Act. 12. Coming to the service of the notice, the plaintiff has placed on record the copy of the notice sent to the defendants under Section 106 of the Transfer of Property Act. The plaintiff has also placed on record the postal receipt in original by which notice was sent by registered post to the defendants. The plaintiff has also produced on record the

original acknowledgement received back which is addressed to Pal Properties India Pvt. Ltd. Address is rightly mentioned as H-72, Connaught Circus, New Delhi. It bears stamp and is signed by some person acknowledging the receipt of the letter. 13. In view of these documents on record it cannot be said that the notice was not received by the defendants. Bare denial would not serve any purpose. [Ref.: Shimla Development Authority & Ors. Vs. Smt. Santosh Sharma & Anr. : M/s. Madan and Co., Vs. Wazir Jaivir Chand .] No. 3. The rent of the premises in question is more than Rs. 3,500/- PM and, therefore, there is no protection of the provisions of Delhi Rent Control Act available to the tenants. 14. The last question which calls for determination is as to whether the tenancy of the defendants is protected under the provisions of Delhi Rent Control Act and the suit is not maintainable in view of Section 50 of the said Act. On this aspect facts are not in dispute. Defendants 1 to 3 are paying the rent of Rs. 1540/-. However, they have sub-let a part of the tenanted premises to defendant No. 4 and defendant No. 4 is paying the rent of Rs. 24,701.25 paise to defendants 1 to 3. Therefore, no evidence is required and legal question which calls for determination is as to whether it is a rent of Rs. 1540/- paid by tenants to the landlord or it is a rent of Rs. 24,701.75 paise paid by sub-tenant to tenants which would be a determinative factor in such proceedings. This issue is no more res integra. Identical question came up for consideration before the Division Bench of this Court in the case of P.S. Jain Company Ltd. Vs. Atma Ram Properties (P) Ltd. & Ors. . In para-5, the question which fell for consideration was posed. It reads as under: “The point for consideration in the appeal is: Whether a tenant who is paying a rent of Rs. 900/- p.m. Section 3(c) of the Delhi Rent Control Act, 1958) can be evicted by a simple notice under Section 106 Transfer of Property Act, through the civil Court if he has lawfully sub-let there premises to two tenants, one for Rs. 40,000/- p.m. and another for Rs. 4,500/- p.m. (in each cases for more than Rs. 3,500/- p.m.)? 15. The answer to this question is found in paras 8, 9 and 12 of that judgment. After relying upon for Supreme Court judgments dealing with purposeful construction of a statute rather than adopting mechanical approach, in para-12 the Court observed as under:”12. In our view, the intention behind Section 3(c) is that a premises which fetches a rent of Rs. 3,500/- p.m. should be exempt and that protection should be restricted to buildings fetching a rent less than Rs. 3,500/- p.m. In case a tenant paying less than Rs. 3,500/- p.m. to his landlord has sublet the very same premises may be lawfully for a rent above Rs. 3,500/- p.m., then the question naturally arises whether such a tenant can be said to belong to weaker sections of society requiring protection. By sub-letting for a rent above Rs. 3,500/- p.m., the tenant has parted with his physical possession. He is receiving from his tenant (i.e. the sub-tenant) more than Rs. 3,500/- p.m. though he is paying less than Rs. 3,500/- p.m. to his landlord. The above contrast is well illustrated by the facts of the case before us. The appellants tenant is paying only Rs. 900/- p.m. to the plaintiff, while one for Rs. 40,000/- p.m. and another for Rs. 4,500/- p.m. In regard to each of these units, the sub-tenants have no protection of the Rent Act. In our view, the purpose of Section 3(c) is not to give any protection to such a tenant. 16. Thus it is clear that the

relevant rent is the one which is paid by sub-tenant to the tenant. In the instant case it is more than Rs. 3,500/- PM and, therefore, no protection under the Delhi Rent Control Act would be available to the defendants and the present suit is not hit by Section 50 of the Rent Control Act. 17. Mr. S.K. Luthra, learned counsel for defendants 1 to 3 vehemently contented that in view of contentious issues which are hotly and seriously contested, this Court should dismiss the present application as the decree is to be passed only when admissions are clear and unequivocal. In support, he relied upon the following observations of the Division Bench judgment in the case of *Pariwar Sewa Sasthan Vs. Dr.(Mrs.) Veena Kalra and others* :

“Admission must be clear and unequivocal. It must be taken as whole and is not permissible to rely on the part of the admission ignoring the other part, photocopy of the judgment is attached hereto and marked as Annexure-V for your ready reference”.

18. The learned counsel also relied upon another judgment of this Court in the case of *Manisha Commercial Ltd. Vs. N.R. Dongre* holding that the discretion was vested with the Court even if there is an unequivocal admission but passing of judgment would work injustice on it the decree could be declined. It was also submitted that plaintiff has yet to establish that it is constituted or incorporated company. the purportedly Resolution dated 13.7.1994 allegedly authorising Mr. C.M. Chadha is also to be proved by plaintiff and, therefore, keeping in view these averments as well as questions of relationship of landlord and tenant between the parties, extension of lease agreement and service of notice under Section 106 of the Transfer of Property Act, this Court should not exercise its discretion in favor of the plaintiff. I am not inclined to accept this submission of the defendants in view of the facts and circumstances of the present case when the plaintiff has been able to establish that three ingredients for passing the decree for possession stand established and going by the record of this case, the Court is convinced that there is hardly any evidence raised by the defendants on these aspects which require any evidence. The denials are totally sham and/or other questions raise are purely legal which do not require any evidence. I see no reason not to allow this application and as purpose is going to be served even when the case to put for trial.
19. As the admissions narrated above are sufficient to enable the plaintiff to get the decree in its favor, the pleas which are raised by the defendant in the written statement or reply are purely legal pleas which can be considered without any evidence and as noticed above, these pleas being meritless could not deter the court from passing the impugned judgment and decree. [Ref: *M/s. Deenar Builders Pvt. Ltd. Vs. M/s. Khoday Distilleries Ltd.* : *Zulfikar Ali Khan (dead) through Lrs. and others vs. Straw Products Ltd. and others* reported in (2000) 6 AD (Delhi) 347) : *Surjit Singh Vs. H. N. Pahilaj (Deceased) Thru. L.R.s.* : *Atma Ram Properties Pvt. Ltd. Vs. Air India* ].

20. The result of the aforesaid discussion is that the present application warrants to be allowed.
21. Application stands disposed of. Suit No. 2154/97
22. The suit of the plaintiff is decreed insofar as recovery of possession of property in question is concerned. A decree for recovery of possession in favor of plaintiff and against the defendants in respect of entire premises bearing No. H-72, Connaught Circus, New Delhi is hereby passed.
23. Insofar as recovery of damages/mesne profit is concerned, an enquiry if ordered under Order XX Rule 12 of the Code of Civil Procedure. For this the Joint Registrar of this Court is to record the evidence and submit his report. The matter is placed before the Joint Registrar (Original) for this purpose. The parties shall appear before him on July 10, 2001.