Delhi High Court Ved Parkash And Another vs M/S. Marudhar Services Limited ... on 26 May, 2000 Equivalent citations: 2000 VAD Delhi 845, 2000 (54) DRJ 654 Author: V Sen Bench: V Sen ORDER Vikramajit Sen, J. 1. The plaint contains several prayers, inter alia, for the passing of a decree of possession of the property in suit. This prayer is available to the Plaintiff if the monthly rent of the suit premises is in excess of Rs. 3500/-. and if the tenancy has been validly terminated. The allegations in the plaint are that the period of lease had expired on 31.8.1995 but that Defendant No.2 continued to occupy the premises even thereafter. Hence the tenancy of the Defendants had been terminated vide notice dated 2.3.1998, the receipt of which is admitted by the Defendants. In para 8 of the its Written Statement the Defendants have pleaded inter alia, as follows: "That the contents of para No. 8 of the plaint are wrong and denied. It is wrong that tenancy was terminated or no reply to the notice dated 2nd Mach, 1998 was given by the defendants. It is submitted that a detailed reply to the said notice was duly sent by the defendant through speed post dated 23.4.1998. That even otherwise it is respectfully submitted that notices issued by the plaintiff stand waived by express and also impleaded consent of plaintiff No.1. The plaintiff renewed the lease and agreed that the defendant can continue to use the leased premises for further period w.e.f. August 1997. Further even after issued of the said notice the plaintiff has accepted the rentals from the defendant including Pay Order No. 026649 drawn on HDFC Bank Ltd. for Rs. 60,000/- towards the rent up to 30 June, 1998. Having thus accepted the rent the plaintiff has waived the rent the plaintiff has waived the notice. Hence the present suit is misconceived and is liable to be dismissed". 2. With regard to the prayer for a decree of possession, on a holistic reading of the Written Statement, it would be fair to hold the Defendant had made an admission with regard to the receipt of notice as well as its legality. Two defenses have been put forward, (a) that the lease had been renewed and (b) that the notice had been waived. Learned counsel for the Plaintiff has vehemently and vociferously argued the prayer for the passing of a decree of possession under Order XII, Rule 6 is misconceived because no admissions have been made which would warrant or justify the grant of this relief. He has submitted that a detailed denial of these statements has not been made by the Plaintiff in its Replication. On this failure, Sections 17 and 31 of the Evidence Act are attracted and this being so a trial is necessary. It is his submission that the estoppel which has come into effect could only be dispelled by the Plaintiff leading and adducing evidence to controvert the stand adopted by the Defendant. Learned counsel further argues that the details furnished by the Plaintiff in its Rejoinder to the Defendant's Reply cannot be taken into consideration since these details should have been incorporated in the Replication itself. Learned counsel further submits that a discretion is vested in the Court under Order XII Rule 6 and it is not an automatic progression that a Decree will follow even where admission have been made. Order XII Rule 6 reads as under :- "6. Judgment on admission. - (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 part or of its own motion and without waiting for the

determination of any other question between the parties, make such order or given 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. 3. These provisions make it abundantly clear that if admission of facts have been made, the Court can pass such orders and give such judgment as it may think fit having regard to the admissions. In granting the decree for possession what is expected to be proved by the Plaintiff? Where the tenancy is governed by the provisions of Transfer of Property Act, a tenancy come to an end either by efflux of time or by the issuance of notice to quit if the circumstances so allow. Even if the receipt of a notice is not in dispute, it is open to the Defendant/tenant to show that it is not in consonance with the provisions of Transfer of Property Act. Where no such objections have been taken, the legitimacy and legality of the notice to quit would stand admitted. In the present case this is the admission which the plaintiff seeks to rely on, and in my view rightly so. The only illegality which is sought to be brought forward by the Defendant is that the lease was renewed"for further period with effect from August 1997". Taken at its face value this pleading amounts to an admission that post August 1997 a tenancy from month to month had come into effect. The legality of the notice to quit could have been assailed if it had been pleaded that the renewal was for a period which would have expired after the issuance of the legal notice to quit. In such a case unless there was a breach of any of the covenants between the party, thereby enabling and empowering the landlord to determine and terminate th lease, which breach was cifically dealt with in the notice to quit, it would not be open to the landlord/Plaintiff to rely on such notice. There is no pleading to this effect and, therefore, I am satisfied that an admission as to the legality of the notice to quit must be read into the Written Statement. It would be too pedantic an approach to maintain that an admission can only be considered to have been made where a particular party specifically agrees to the correctness of a statement made in pleadings by the opposite party. The admission must be drawn from the totality of the circumstances of the case; the Court is not powerless to review the entire defense presented in the written Statement.It is only in those instances where, from other attendant facts the Court is of the view that despite the existence of admissions triable issue have arisen, that its discretion should be exercised. There would be no justified for the exercise of 'discretionary powers' where no triable issues have arisen. 4. I will now deal with the plea of waiver. This is necessary in considering any application under Order XII, Rule 6, because the plea of waiver would tantamount to a challenge to the continued legality of the notice to quit and its efficacy for pronouncement of a decree for possession. If no such plea is taken then it would amount to an admission. In this context, to argue that consequence decree for possession could not follow, learned counsel for the Defendant has stated that this plea having been raised, can only be appropriately dealt with after evidence is adduced. However, evidence can be permitted only where there is a pleading justifying the leading of evidence. It is impermissible to allow evidence to be led in the absence of pleadings. I have

already reproduced para 8 of the Written Statement which contain a plea of waiver which is predicated on the acceptance by the Plaintiff of pay Order No. 026649 drawn on HDFC Bank Limited for Rs. 60,000/- towards the rent upto 30.6.1998. The pleadings of the Defendant have already been extracted above. The explanation given by the Plaintiff is contained in paragraph 2 of its reply to the Preliminary Objections and reads as follows:"With respect to para 2 of the Preliminary Submission it is submitted that the tenancy was terminated vide notice dated 2.3.1998. It is denied that there has been any agreement for further lease or any renewal of tenancy at all. The defendant has deliberately not given the dates of the drafts and when they were given in order to create confusion. The plaintiffs have not accepted any money at all from the defendant after issue of said notice of termination dated 2.3.1998. The defendant had given a cheque for Rs. 1,45,000/- dated 5.6.1997 towards arrears of rent. This cheque was dishonoured and towards the said cheque the defendant paid, Rs. 60,000/- vide Pay Order No. 123913 dated 2.9.1997 drawn on State Bank of Swarashtra which was deposited by plaintiff on 4.9.1997 and another pay order No. 026649 drawn on HDFC Bank dated 18.11.1997 which was deposited on 19.11.97 by plaintiff. The said drafts were towards the dishonoured cheque. It is specifically denied that any draft was given for advance rent in November, 1997 or accepted by the Plaintiffs for any period after the notice of termination. Notice dated 2.3.1998 is neither vexatious nor bogus etc. as alleged. The termination notice has been served on the defendant, and duly replied by the defendants. There is no waiver of notice at all because the payment is prior to notice and not after notice, and further it was for arrears of rent. It is denied that application is false, baseless or frivolous as alleged." 5. Learned counsel for the plaintiff has submitted that the said Pay Order was dated 21.11.1997 and that this dated had deliberately and dishonestly withheld from the pleadings of the Defendant for obvious reasons. These reasons are that this payments as received much before the issuance of the legal notice dated 2.3.1998 and in respect of rent due prior to March 1998. It would, therefore, obviously not operate as a waiver of that notice. It has not been pleaded that rent has been tendered in any other manner, even after the receipt of the notice dated 2.3.1998. Even if a bald assertion had been made in this regard, the Court is not powerless to look into the surrounding circumstances to see whether this was only a plea calculated to protract and prolong the litigation. In the present case, however, this exercise does not lead inexorably and unmistakingly to this conclusion, since the Defendants case is that the waiver was in terms of the Pay Order No.026649. As already mentioned above this would be clearly an anachronism, in as much as the Pay Order predates the notice. Furthermore, if the argument of the learned counsel for the Defendant is accepted, it would result in the anomalous position that whilst the pleadings of the Defendant is substantiation of its plea of waiver are allowed to be sketchy and bereft of necessary and requisite detail, the Plaintiff's explanatory pleadings containing the necessary details would have to be ignored. The failure of the Defendant to plead full particulars cannot be countenanced. it is palpably clear that the Defendant has deliberately made vague pleadings in order to mislead the Court. 6. Learned

Counsel for the Defendant had relied on a decision of my learned brother J.B. Goel, J. in Kanta Manocha Vs. M/s. Hindustan Paper Corpn., 1998 V AD (Delhi) 486 and M/s. Simla Wholesale Mart., Vs. M/s. Baishnodas Kishori Lal Bhalla and others, AIR 1997 HP 29. Having perused these decision I am of the view that they have no application to the facts of the present case. 7. Having considered the submissions made before me I am satisfied that, on a complete and meaningful reading of the Written Statement, there is an admission of the receipt of the notice to quit. There is a further admission as to its legality because no triable issues have been raised in the challenge thereto. Merely because a palpably false case has been set up, in the present circumstances relating to the waiver of the notice, it would not lead to the consequence that a judgment should not be passed. Failure to plead facts which constitute a valid defense, must be read as admissions made as contemplated by Rule VI of Order 12. To hold otherwise would be an emasculation of judicial powers to dispense complete justice. Justice delayed is justice denied. 8. In these circumstances the application is allowed and a decree of possession is passed in favour of the Plaintiff and against the Defendants in respect of the first floor of property bearing No. C-52, Soami Nagar, New Delhi-110017, comprising three bedrooms with attached bathrooms, drawing/dining, kitchen and family lounge. The Plaintiff shall be entitled to Rs. 5000/- as costs.