Delhi High Court Rajiv Srivastava vs Sanjiv Tuli And Anr. on 24 March, 2005 Equivalent citations: AIR 2005 Delhi 319, 119 (2005) DLT 202 Author: M Sharma Bench: M Sharma, R Sharma JUDGMENT Mukundakam Sharma, J. 1. This appeal is directed against the judgment and decree dated 28th April, 2001 passed by the Additional District Judge, Delhi in Suit No.104 of 2000 decreeing the aforesaid suit for possession in respect of flat bearing No.B-46, Hill View Apartment, Vasant Vihar, new Delhi and directing for handing over and vacating the suit premises to the respondents herein within a period of three months. It was also ordered that the claim for mesne profit/damages w.e.f 1.4.1999 till the date of delivery of the possession would be determined under Order 20 Rule 12 of the Code of Civil Procedure by a separate enquiry. Therefore, in this particular appeal the scope of scrutiny would be confined to only the decree of possession, which was granted by the learned trial court in the aforesaid suit on the basis of an application filed by the respondents under Order 12 Rule 6 of the Code of Civil Procedure. We had heard the learned counsel appearing for the appellant on the said issue, at length, who had also taken us through the findings recorded and relevant documents. 2. The aforesaid suit was filed by the respondent Sh. Sanjeev Tuli, who is the exclusive owner and landlord of the flat bearing No.B-46, Hill View Apartment, Vasant Vihar, new Delhi, which is the suit property. The suit was instituted against M/s. Beltek India Limited. The aforesaid premises was given on lease for a period of two years, which commenced from 11th September, 1996 and was due to expire on 10th September, 1998 under a registered lease deed dated 26th September, 1996. One of the stipulations in the said lease deed was that the premises in question was let out for residential purposes to Mr. Rajiv Srivastava and his family members and not for any other purpose. It was stated in the plaint filed that before expiry of the lease period, the respondent herein, who was the plaintiff, informed the defendant, namely, M/s. Beltek India Limited about the term of lease deed, vide letter dated 30th July, 1998, which was duly acknowledged by the authorised signatory of the respondent company. As Ms. Beltek India Limited, respondent No.2 herein failed to vacate and hand over vacant possession of the premises, on expiry of the lease deed and they continued to occupy the premises illegally and without any authorisation, the aforesaid suit was filed seeking for a decree of possession and also for payment of mesne profit and damages. The suit was initially filed by the respondent No.1 herein as the plaintiff against M/s. Beltek India Limited as the sole defendant, as the lease agreement was between the said two parties. Subsequently, however, defendant No.2, who is the sole appellant herein, filed an application for impleadment, upon which he was imp leaded as one of the defendants and, therefore, the suit had two defendants on record, when the judgment and decree was passed. 3. The suit was contested by both the defendants by filing written statement. Replication to the written statement of the defendants was also filed. The learned trial court proceeded to record the statement of the appellant herein under Order 10 Rules 1 and 2 of the Code of Civil Procedure, on 14th March, 2001. An application was filed by the respondent/plaintiff under Order 12 Rule 6 of the Code of Civil Procedure to pass a decree for ejectment of the defendants from

the suit premises on the ground that there was clear and unequivocal admission on the part of the respondent. The said application was also opposed by the defendant. The learned trial court heard the counsel for the parties on the said application and on appreciation and analysing the leadings of the parties and the admissions made, decreed the suit partly in the aforesaid manner. The learned trial court considered the pleadings of the parties as well as the documents placed on record and thereafter it recorded that the following facts are admitted between the parties:- i. Rate of rent of the premises is Rs.12,000/- per month. ii. Relationship of landlord and tenant between the parties. iii. Registered lease-deed had come to an end by efflux of time. Another admission, to which reference was made, was to the following effect:- "After expiry of the registered lease-deed dated 26th September, 1996, no fresh lease deed had been executed and registered." 4. The learned trial court also found that notwithstanding the aforesaid admissions, a plea was raised in the written statement by the defendants that the termination of the tenancy was not in accordance with the provisions of Section 106 of the Transfer of Properties Act and that the notice terminating the tenancy was illegal. The learned trial court thereafter proceeded to examine the scope and ambit of the provisions of order 12 Rule 6 of the Code of Civil Procedure and in that connection referred at Single Judge decision of this court in M/s. S.L. Associates Pvt. Ltd. v. Karnataka Handloom wherein it was observed by this court that the word 'otherwise' in Order 12 Rule 6 CPC clearly indicates that it is open to the court to pass the judgment on the statements made by parties not only in the pleadings but also dehors the pleadings and that such admissions might be made either expressly or constructively. 5. Thereafter, the learned trial court examined the validity of the notice issued by the respondent No.2 under the provisions of Section 106 of the Transfer of Properties Act and on scrutinising the same, it came to the conclusion that the notice terminating the tenancy on the last day of tenancy month i.e. mid-nigh of 30th April, 1999 and having been received more than 15 days before the date, the notice issued under Section 106 of the Transfer of Property Act was valid. It was also held that the said notice was issued in accordance with law and was served on the appellant as also on the respondent No.2. Thereafter, the learned trial court proceeded to examine the admissions in the defense raised. It found that the respondent No.2 came in possession of the suit property on the strength of the registered lease deed dated 26th September, 1995, which is an admitted document. However, an oral agreement was pleaded by the defendants for extension of lease deed for a further period. The said plea was found to be contradictory to the terms of the contract, which was ordered to be struck out by the learned trial court in terms of the provisions of Order 6 Rule 16 of the Code of Civil Procedure and after relying upon the decision of this court in Ved Prakash v. Marudhar Services reported in 2000 Rajdhani Law Reporter 423. 6. Having ordered for striking out the aforesaid plea, the learned trial court proceeded to examine the terms of the registered lease deed between the parties and held that the period of lease had come to an end by efflux of time and that a notice of termination of tenancy was issued by way of abundant caution and on consideration of various decisions of this

court , particularly in K. Kishore and Construction (HUF) v. Allahabad Bank , Surjit Sachdeva v. Kazakistan Investmnt Services (P) Ltd. and ANR , Samir Mukerjee v. Devender Kumar Bajaj and Anr. . It was held that a case for decree for possession was made out on the basis of the aforesaid admissions in the written statements and consequently the said decree, to the aforesaid extent, was passed by the learned trial court. 7. Counsel appearing for the appellant, however, submitted before us that the learned trial court could not have referred to and relied upon the admissions of the appellant herein, allegedly made in the statement recorded under Order 10 Rule 1 and 2. In order to substantiate his plea, the counsel referred to para 10 of the impugned judgment and decree passed by the learned trial court wherein the trial court had made a reference to the statement recorded on examination of the appellant under Order 1 of the Code of Civil Procedure, which was recorded on 14th March, 2001. He had stated that the appellant had categorically admitted in his statement about execution of the registered lease deed dated 26th September, 1996 and he also admitted that the tenancy had been created for a period of two years, which commenced from 11th September, 1996 and came to an end on 10th September, 1998. He further admitted in the said statement that the rate of rent was Rs.12,000/- per month, which was paid up to 31st March, 2000. It was also admitted by the said appellant that he came in possession of the premises in question on the strength of registered lease-deed dated 26th September, 1996 and that it was not disputed that term of lease was for a period of two years, which expired by efflux of time and that it was admitted by the appellant in the said statement that lease deed dated 26th September, 1996 was not got renewed after the expiry of the lease period. In that context it was submitted by the learned counsel for the appellant that the said statement could not have been referred to and relied upon by the learned trial court as an admission, particularly when there was no such admission in the pleadings of the parties. 8. When, however, reference is made to the provisions of Order 12 Rule 6 of the Code of Civil Procedure, it is clear and apparent that such admission could be either from the pleadings of the parties or even otherwise. We may appropriately refer to the decision of the Supreme Court in Uttam Singh Duggal and Co. Limited v. Union Bank of India . The scope and ambit of Order 12 CPC is stated thus in paragraph 12, which is as under:- “As to the object of the Order XII, Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that”where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the formed to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed." 9. A Division Bench decision of this court has laid down the following interpretation of the provision of Order

12 Rule 6 CPC , in the decision of ITDC Limited v. Chander Pal Sood and Son :- "Order 12 Rule 6 of Code gives a very wide discretion to the Court. Under this rule the Court may at any stage of the suit either on the application of any party or of its own motion and without determination of any other question between the parties can make such order giving such judgment as it may think fit on the basis of admission of a fact made in the pleadings or otherwise whether orally or in writing." 10. The use of the expression 'Otherwise' in the aforesaid context came to be interpreted by the court. Considering the expression the court had interpreted the said word by stating that it permits the court to pass judgment on the basis of the statement made by the parties not only on the pleadings but also dehors the pleadings i.e either in any document or even in the statement recorded in the court. If one of the parties' statement is recorded under Order 10 Rules 1 and 2 of the Code of Civil procedure, the same is also a statement which elucidates matters in controversy. Any admission in such statement is relevant not only for the purpose of finding out the real dispute between the parties but also to ascertain as to whether or not any dispute or controversy exists between the parties. Admission if any is made by a party in the statement recorded, would be conclusive against him and the court can proceed to pass judgment on the basis of the admission made therein. Even otherwise, without making any reference to the said statement a decree of the nature, in our opinion, could have been passed when the terms and conditions of the registered lease deed are referred to which is a part of the pleadings of the parties. Even in the pleadings, no dispute is raised with regard to execution of the registered lease deed between the parties. The registered lease deed was executed between the parties on the specific terms and conditions mentioned therein. The trial court has referred to the same terms and conditions and after scrutinising the same has held that the rate of rent of the premises was Rs.12,000/- per month and that relationship of landlord and tenant is admitted and that the said registered lease deed had came to an end by efflux of time. The notice dated 25th March, 1999, terminating the tenancy, was also examined by the learned trial court in depth and on scrutinising the same it was held that the said notice was served on the appellant and that the said notice is legal and valid. We find no infirmity in the aforesaid conclusions and findings of fact recorded by the learned trial court. Considering the entire facts and circumstances of the case, we also hold that the parties were bound by the terms and conditions of the lease agreement, which was a registered document. The said tenancy had come to an end by efflux of time, which was also terminated by notice dated 25th March, 1999 terminating the tenancy, which was by way of abundant caution. An oral lease of extension was pleaded, which was struck out by the learned trial court on the ground that the same was contradictory to the written agreement filed and, therefore, cannot be looked into in terms of the provisions of Order 6 Rule 16 of the Code of Civil Procedure. When the original lease is registered and comes to an end by efflux of time, the plea of renewal of lease through oral agreement is vexatious. The said plea, therefore, was rightly struck out. 11. Considering the entire facts and circumstances of the case, we are of the considered opinion that the decree passed by the learned trial court suffers from no infirmity. We

find no merit in this appeal and the same is dismissed with costs.