Delhi High Court Delhi Jal Board vs Surendra P. Malik on 24 March, 2003 Equivalent citations: 2003 IIIAD Delhi 419, 104 (2003) DLT 151, 2003 (68) DRJ 284 Author: Khan Bench: B Khan, R Sodhi JUDGMENT Khan, J. 1. Whether impugned judgment and decree for recovery of possession of Flat Nos. 12 & 11 at Connaught Place, New Delhi could have been passed under Order 12 Rule 6 CPC is the question. 2. The suit premises was taken on rent by Appellant from predecessor in interest of respondent (M/s. Raghubir Saran Charitable Trust) vide Lease Deed dated 30.7.1965 for two years on a monthly rent of Rs. 3,790/-. The lease was to commence from 27.5.1965 and expire on 30.3.1967. Appellant, however, continued to remain in possession after the expiry of lease on 30.3.1967 also. Meanwhile, pursuant to an amendment in the Delhi Rent Control Act, the suit premises fell out of its ambit and the Trust filed a suit No. 191/98 for recovery of possession and damages and mesne profits. The Trust was later substituted by Respondent who had purchased the suit property meanwhile. 3. Appellant filed its written statement raising the preliminary objection that the suit suffered from lack of cause of action and that no notice was served on the Board under Section 478 of DMC Act. On merits, it claimed that it was continuing in the premises as a tenant without any dispute for 23 years as was evident from the pre-receipted bills of rent raised by the Trust and the present respondent and the rent received by them. It accordingly denied that tenancy had expired by efflux of time and also disputed that any notice was served on it under Section 106 of the Transfer of Property Act to terminate it. 4. As many as seven issues were framed in the suit on 19.10.2000 which included the issues related to service of notice under Section 478 of DMC Act and about the validity of termination of tenancy by notice under Section 106 of TPA also. Respondent (plaintiff) was asked to lead evidence on 27.11.2000. The suit was listed on different dates for plaintiff's evidence till 17.4.2001. 5. It appears that instead of leading any evidence in the suit, respondent (plaintiff) filed an application under Order 12 Rule 6 read with Section 151 CPC seeking a judgment on admission of facts. This application was contested by Appellant on its maintainability as also on merits disputing that any admission of fact arose on the basis of which a decree could be passed. The Trial court all the same dealt with all the pleas and objections taken by Appellant and entered the judgment on holding that tenancy in question had expired by efflux of time, obviating the necessity of service of notice under Section 106 of Transfer of Property Act. It also held that provisions of Section 478 of DMC Act were not attracted to the case to warrant any prior notice under these and in any case notice under this and under Section 106 of TPA should be presumed to have been served in the facts and circumstances of the case. The court then proceeded to pass the judgment on finding that there were admissions of fact in respect of relationship of landlord and tenant between the parties and of the tenancy having expired by efflux of time and also of the rent fixed under the Lease Deed. 6. Appellant's whole case is that Trial Court could not have passed the judgment under Order 12 Rule 6 as there were no unequivocal admissions of fact arising in the suit and as issues stood framed in it which required evidence for determination which was not led by the plaintiff and instead application under Order 12 Rule 6 was filed

by him 10 years after Appellant's written statement. It is submitted that once Respondent had disputed that tenancy had not expired by efflux of time and that it was continuing and was not terminated, no judgment/decree could have been passed under Order 12 Rule 6 CPC upon a rebuttable presumption raised by Trial court in respect of notices under Sections 478 of DMC Act and 106 of Transfer of Property Act. 7. Ld. counsel for Respondent justified the judgment claiming that the tenancy had admittedly expired on 30.3.1967 and since no further tenancy had come into being thereafter, the question of its termination by notice under Section 106 TPA did not arise. Nor could the raising of bills or receipt of rent by respondent create a tenancy which had admittedly expired by efflux of time. He cited several Supreme Court judgments including that of G.D. Morarka Vs. K.C. Dass AIR 1969 SC 1067, Shanti Devi Vs. A.K. Banerjee AIR 1981 SC 1550, Kulkarni Patterns Pvt. Ltd. Vs. Vasant Baburao Ashtekhar and the judgment of this court in P.S. Bedi Vs. Rajat Pal to support this. He also contended that no notice was required to be served on Appellant under Section 106 TPA to terminate the tenancy or Section 478 DMC Act which was attracted whether or not the impugned judgment and decree could be passed under Order 12 Rule 6 CPC remains to be seen. For this, it becomes necessary to know the ambit and scope of this provision which reads thus:- "6. 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." 8. The provision confers almost sweeping powers on the Court to render a speedy judgment in the suit to save the parties from going through the rigmarole of a protracted trial. The only pre-requisite for this is that there must be admissions of fact arising in the suit, be that in the pleadings or otherwise or orally or in writing. Such admission of facts must be clear and unequivocal, unconditional and unambiguous and may relate to the whole claim or a part of it. These need not be made specifically or expressly and could be a constructive admissions also. Whether or not such admission arose in the suit would depend on the facts and circumstances of the case. If it involved disputed facts, claims and counter claims requiring evidence of parties for determination of issues or where the defense of a party touched the root of the matter, a judgment could not be passed under Order 12 Rule 6 dispensing with the trial because the valuable right of going to trial could not be taken away from the party unless the claim was admitted. A duty was, therefore, cast on the court to ascertain the admission of facts and to render judgment on these either in respect of the whole claim or a part of it. The court could do so on its own or on the application of a party and without waiting for the determination of any other question between the parties. It could do so at any stage of the suit. Dealing with the scope of provision, Supreme Court said in Uttam Singh Duggal Vs. Union :- "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 a speedy judgment. Where the other party has made a plain admission entitling the former 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. The test, therefore, is (i) whether admissions of fact arise in the suit, (ii) whether such admissions are plain, unambiguous and unequivocal, (iii) whether the defense set up is such that it requires evidence for determination of the issues and (iv) whether objections raised against rendering the judgment are such which go to the root of the matter or whether these are inconsequential making it impossible for the party to succeed even if entertained. It is immaterial at what stage the judgment is sought or whether admissions of fact are found expressly in the pleadings or not because such admissions could be gathered even constructively for the purpose of rendering a speedy judgment. 10. Given regard to this, it becomes easy to scrutinise whether or not the impugned order was passed on admissions of fact and within the parameters of Order 12 Rule 6. The crux of the matter lies in whether admissions of fact arise pointing to the lease being a fixed term lease for two years and whether it had expired on 30.3.1967 by efflux of time or whether it could be said to be subsisting on any logic and whether any new lease was created through receipt of rent by Respondent. If the admissions of fact show that the lease was for 2 years and had expired by efflux of time, all other issues related to termination of tenancy under Section 106 TPA or notice under Section 478 of DMC Act would pale into insignificance. 11. There is hardly any scope for doubt that admission of this fact arises in the suit both from pleadings and otherwise. It is the admitted position that relationship of a landlord and tenant existed between the parties which had come about through the execution of Lease Deed dated 30.7.65 which was for a fixed term of two years and expired by efflux of time on 30.3.1967 and by virtue whereof Appellate entered and occupied the premises. It is also not anybody's case that the lease was either renewed or any fresh lease was made to create new tenancy on existing or any new terms whatever. It is not the appellant's case also that it was in possession of the premises pursuant to any new Lease Agreement or Deed after the expiry of fixed term lease on 30.3.1967 or that it was holding over the premises under Section 116 of the Transfer of Property Act. All it claims is that parties had intended the Lease to continue which was inferable from the rent bills raised by Respondent and the rent amount received by him. The question that arises is whether mere receipt of rent by respondent or his predecessor in interest by itself could continue the tenancy which had otherwise expired by efflux of time or re-create it so as to require determination by service of notice under Section 106 of TPA. 12. It is no longer a grey area that where a tenancy had otherwise expired by efflux of time but the tenant continued in possession of the premises, mere acceptance of rent by the landlord could neither renew the tenancy nor create a new one. That is so because such subsequent

occupation of premises was not in pursuance of any contract, express or implied between the parties. It could at best be by virtue of the protection granted by a statute like Delhi Rent Control Act so long the tenancy fell within its purview but once the tenancy was out of its protection shield, it was not required to be determined by notice under Section 106 of TPA as it stood already determined by efflux of time under Section 111 of that Act. We find support for this in the Supreme Court judgment in G.D. Murarka's case:- "Where a contractual tenancy to which the rent control legislation applied has expired by efflux of time or by determination by notice to quit and the tenancy continues in possession of the premises by virtue of statutory protection, acceptance of rent from the tenant by the landlord after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord has assented to a new contractual tenancy." 13. Even otherwise notice under Section 106 TPA was sent to Appellant by registered AD which was returned to respondent. The Trial Court has raised a presumption of service of this notice against the appellant in the facts and circumstances of the case and in our view rightly. The only objection raised in this regard is that the envelope containing the notice did not carry the full address of Appellant. All this including the plea about non-service of notice under Section 478 DMC Act represent appellant's attempts to catch at straws and to close eyes to the reality. In any case, this aspect does not assume any importance as no notice under Section 106 was required to be served on appellant due to the expiry of the Lease between the parties by efflux of time, nor was notice under Section 478 of DMC Act relevant in the circumstances. 14. Could it, therefore, be said in this scenario that objections raised by the Appellant were such which touched the root of the matter or that the discretion exercised by Trial Court to enter the judgment under Order 12 Rule 6 was improper. 15. The answer to this has to be in the negative. Because Trial court had rightly proceeded on the admissions of fact arising in the suit which left no scope for doubt that tenancy had expired by efflux of time. There was nothing to suggest that the Lease had continued thereafter or any new tenancy was created between the parties to warrant its termination by service of notice under Section 106 TPA. The other issue related to notice under Section 478 DMC Act was also answered rightly. The court was, therefore, within its competence and justified to render the judgment on the admissions of fact that tenancy had expired by efflux of time and to leave aside the other issues even though these may have been determinable. There was also nothing wrong in its doing so though the suit was at evidence stage because it could enter such judgment at any stage of the suit in the mutual interest of both parties. It is also not that if objections taken by Appellant were entertained, it would have altered the result or the course of the suit anyway. 16. Therefore, looking at it in the right perspective and from any angle, we find nothing wrong in the Trial court judgment which is affirmed and this appeal dismissed.