Delhi High Court Surjit Sachdev vs Kazakhstan Investment Services ... on 1 February, 1997 Equivalent citations: 1997 IIAD Delhi 518, 66 (1997) DLT 54 Author: D Gupta Bench: D Gupta, K Gupta JUDGMENT Devinder Gupta, J. (1) The appeals are against a common order passed by the learned Single Judge of this Court on 10.5.1996 - 23.5.1996 deciding the plaintiff-appellant's prayer to pass judgment on admission under Order 12 Rule 6 of the Code of Civil Procedure and to appoint a Receiver, as prayed under Order 40 Rule 1 of the Code of Civil Procedure (for short 'Code') with respect to the suit property. (2) The facts in brief are that in the suit instituted on 24.5.1995 a decree for ejectment/possession in respect of property No. S-54, Panchsheela Park, New Delhi along with a decree for recovery of Rs. 5,05,000.00 towards mesne profits and future mesne profits @ Rs. 1,50,000.00 p.m. or at such higher rate as may be prevalent in future and pendente lite and future interest at the rate of 18% p.a. has been claimed by the plaintiff-appellant against defendant-respondents 1 & 2. It is also prayed that defendant No. 3 be also held liable for mesne profits and if necessary in respect of other reliefs as well. Along with the Suit Ia 4639/95 was filed under Order 40 Rule 1 read with Order 39 Rules 1 & 2 and Order 38 Rule I and Section 151 of the Code praying that a Receiver be appointed forthwith, who should take possession of the property in suit and hold the same till further orders, defendants 1 & 2 be restrained from using the property for any commercial purpose or by any one else other than defendant No. 2 and in case defendant No. 2 happens to come to India, he be restrained from leaving the country till possession has been handed back to the plaintiff-appellant and dues cleared. (3) After the defendants were served and written statement was filed/the suit and the application came up before Court on 29.2.1996, when a prayer was made by learned Counsel for the plaintiff that on the basis of an admission contained in the written statement filed by defendant No. 1 the plaintiff is entitled to a decree for possession of the suit property. This prayer was opposed by learned Counsel for defendant No. 1 stating that no admission has been made by defendant No. 1 in its written statement. It was also stated by the learned Counsel for the plaintiff that since the written statement does not contain an admission for passing a decree for the remaining prayer for mesne profits, as such the plaintiff was not praying for a decree on admission for mesne profits at this stage. Direction was made by the learned Single Judge on that day to defendant No. 2, the Chairman of defendant No. 1, to remain present in Court on the adjourned date along with his passport, for verifying as to for what period he stayed in India since the pendency of the suit. Case was adjourned to 10.5.1996, on which date the application of the plaintiff was disposed of. The Court declined to pass decree on admission for possession at this stage or to appoint a Receiver. The defendant-respondents were restrained from changing the user of the suit property from residential to commercial. It is this order, which is under challenge in this appeal. (4) We have heard learned Counsel for the parties and also been taken through the entire record and the pleadings. (5) The suit is founded on the allegation that the plaintiff is the owner of the property, which is a single unit (duplex) Luxury residential house built on sub leasehold plot. The terms of perpetual sub lease provide for residential user and

even the zonal plan of D.D.A. makes that provision. Colony is residential and neighbours are also residents. Defendants 1 & 2 approached the plaintiff for taking on rent the property in favour and in the name of defendant No. 1 for residence of defendant No. 2 only for a period of 12 months commencing from 15.2.1994 at a monthly rent of Rs. 18,000.00 . Plaintiff accepted to the proposal and accordingly on 24.2.1994 a lease deed was executed which was registered with the Sub Registrar Iii, New Delhi. Rent was received in advance from defendant No. 1 by means of cheque dated 11.2.1994 for the entire period of lease. Possession was delivered by the plaintiff to defendant No. 1-Company and defendant No. 2. Mr. Terence M. Burke commenced residing in the premises. (6) It is alleged that as the end of the lease was approaching, enquiries were made by the plaintiff in early 1995 when it was found that defendant No. 2 was not residing in the premises. Accordingly letter dated 9.2.1995 was sent but there was no response. Period of lease expired on 14.2.1995. Possession was not handed back. Enquiries further revealed that defendant No. 2 had resided only for some time in the premises but then gave possession to defendant No. 3. It was in clear breach of the terms of the lease and defendants 1 & 2 also failed to put the plaintiff in possession. Accordingly it was prayed that since lease had expired the plaintiff was entitled to recovery of possession. (7) There are other allegations made as regards the user of the premises, which though may not be relevant for the purpose of deciding these appeals but are being noticed. It is stated that lease deed provides for the user, which states that the premises shall be used for the purpose of residence of Mr. Terence M. Burke, defendant No. 2 and his family and for no other purpose. It is also stated that neither defendant No. 2, nor his family is residing in the property. The same is being used for some office purpose by defendant No. 3 with lot of security outside. It is stated that full details thereof are not available to the plaintiff. Property is situated within the residential area and the terms of perpetual sub lease also provide for residential use. There is breach of the terms of the lease agreement by the defendants. The plaintiff also stated that since defendants 2 was not residing and the property was being mis-used, therefore, the plaintiff was entitled to a decree for injunction restraining any commercial use and also for an injunction restraining occupation by any one else and in these circumstances the plaintiff was entitled to a Receiver and forthwith possession. As regards liability for damages, it was alleged that Clause 15 of die Lease Deed provide that in the event of lessee failing to vacate the premises within the stipulated period of the lease or on expiration of any agreed extension thereof the lessee shall pay liquidated damages at the rate of Rs. 3,500.00 per day, excluding all costs and damages and legal expenses. It is also stated that the lease deed provides that this would not absolve the right of the lessor to get the lessee vacated through due process of law. Though, according to the agreed terms, the damages payable are at the rate of Rs. 1,05,000.00 per month, yet the market rents prevalent in 1995 for the properties in the locality are around Rs. 1,50,000.00 per month, therefore, the plaintiff claimed mesne profits at the rate of Rs. 1,50,000.00 per month or in other words Rs. 5,000.00 per day. Accordingly mesne profits for the period from 15.2.1995 to 24.5.1995 are claimed

in the suit amounting to Rs. 4,95,000.00 along with interest at the rate of 18% p.a., which till date of filing of suit was Rs. 10.295.00 but was rounded to Rs. 10,000.00 . In this background the plaintiff- appellant has prayed for the decree. (8) Defendant No. 3 filed written statement on 29.9.1995 whereas defendants 1 & 2 filed their written statement on 27.11.1995. Written statement on behalf of defendants 1 & 2 has been signed and verified by one Mr. L. Ramesh, stated to be the duly constituted attorney of defendants 1 & 2 whereas written statement filed on behalf of defendant No. 3 is signed and verified by him. Pleas taken in the written statements are exactly same and similar. (9) In the written statements it is pleaded that lease entered between the plaintiff and defendant No. 1 has been renewed by the plaintiff. Defendant No. 1, thus, being the lawful tenant in the premises can only be evicted in accordance with due process of law. Defendant No. 1 through letter dated 18.1.1995 had communicated to the plaintiff its intention to renew the lease with effect from 14.2.1995. Plaintiff had also agreed for renewal at the same terms and conditions, as mentioned in the lease deed dated 24.2.1994 and it is stated that pursuant to the said renewal defendant No. 1 continues to be in possession of the suit premises as a lawful tenant of the plaintiff. It is alleged that the plaintiff later on informed defendant No. 1 that she wanted to increase the rent from the agreed rate of Rs. 18,000.00 p.m. to Rs. l,05,000.00 per month. Defendant No. 1 declined to accede to this arbitrary demand of the plaintiff and insisted upon the rent to be Rs. 18,000.00 p.m., as earlier agreed. It is also alleged that defendant No. 1 also tendered rent at the rate of Rs. 18,000/- p.m. to the plaintiff but the plaintiff wrongly refused to accept the same. The suit is stated to have been filed in order to harass defendant No. 1 and pressurise it to indirectly accede to the arbitrary and unreasonable demand of the plaintiff for increase of the rent to Rs. 1,05,000.00 p.m. (10) It is also alleged that defendant No. 2, the Chairman of defendant No. 1 Company, because of nature of work has to remain out of country. He had authorised defendant No. 3 to visit the suit premises in his absence in order to maintain and safeguard the same. It is denied that defendant No. 2 has not been residing in the premises or that the premises are used for commercial purpose. It is asserted that defendant No. 2 has been residing and continues to reside in the suit premises. Liability to pay damages or mesne profits is denied. (11) In the background of these pleadings the question arising for determination in these appeals is that whether the plaintiff will be entitled to judgment in her favour in terms of Order 12 Rule 6 of the Code or in other words that whether on the pleadings of the parties, as regards the plea of possession no issue arises for determination and decree straightaway can be passed thereby leaving the remaining matters in controversy to be decided on framing of issues or by appointing a local commissioner for the purpose of ascertaining the amount of mesne profits. (12) The purport of Rule 6 of Order 12 of the Code is to enable a party to obtain speedy judgment at least to the extent of the relief, which, according to the admission of the other party, he is entitled. Admission on which judgment can be claimed must be clear and unequivocal one and such an admission must be either of the entire claim made in the suit or even for a part of the claim for which decree can be passed

separately. (13) A learned Single Judge of this Court in M/s S.L. Associates Pvt. Ltd. v. Karnataka Handloom Dev., , relying on the ratio of a Division Bench decision of the Madhya Pradesh High Court in Shikharchand and Others v. Mst. Ban Bai, and Others, , proceeded to pass a decree for possession holding that ordinarily the plaintiff is entitled to a relief only on the basis of cause of action stated in the plaint, but it is open to a Court, in a suitable case, to afford relief on the basis of the case set up by the defendant since no prejudice is caused to the defendant because the relief legitimately springs from the case set up by the defendant. In that case it was held that there was admission by the defendant that it had entered into possession of the suit property on the strength of the lease deed. Assuming in favour of the defendant that the lease was further extended for a period of three years and even that period was held to have come to an end during pendency of the suit, in view of the altered situation the plaintiff was held entitled to judgment under Order 12 Rule 6 of the Code; on unequivocal admissions that entry in possession was on the basis of lease and even the extended period had come to an end. Granting decree for possession the trial of the suit was postponed for the remaining relief for mesne profits. (14) Learned Counsel for the defendant-respondents has not disputed the proposition in law that in a case of clear and unequivocal admissions, suit can be decreed or in other words decree in part for one of the reliefs can be passed but his submission has been that (a) there is no admissions in this case entitling the plaintiff to claim a decree for possession or to enable this Court to pass a decree in plaintiff's favour; (b) there was no application moved by the plaintiff for judgment under Order 12 Rule 6 of the Code, in the absence of which it will not be permissible to pass a decree; and (e) there is a plea raised by the defendant regarding renewal of lease. Lease stood renewed and since the lease stood renewed, suit for possession founded on the cause of action as pleaded will not remain competent and maintainable and will have to be dismissed. Without determining the renewed lease suit will not be maintainable. In any case on extension of die lease the tenancy from month to month will be deemed to have come into being, which would be liable to be terminated before the plaintiff can claim a decree for possession from the defendant. Learned Single Judge declined to grant relief to the plaintiff observing that in view of the plea of renewal, it will be necessary to determine the lease; issues will have to be framed whereas in S.L. Associates's case also issues were framed. Even thee stage of admission and denial of documents had not yet reached and it will amount to pre-decreeing the suit at this stage in case decree, as prayed, is passed. (15) The requirement, prior to the Code of Civil Procedure Amendment Act, 1977, of filing a formal application under Order 12 Rule 6 of the Code now stands waived. Under the amended provisions of Rule 6 of Order 12 of the Code, a Court can on its own motion, without an application by a party can proceed to pass a decree on admission. Order 12 Rule 6 reads : "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." (16) A bare reading of Rule 6 would suggest that Court either on the application of any party or on its own motion and without waiting for determination of any other question between the parties proceed to give judgment as it may think fit having regard to the admission. Otherwise also the contention of the learned Counsel for the defendant that application was necessary does not hold good in view of what is stated in the order passed by learned Single Judge on 29.2.1996. Counsel for the plaintiff made an oral prayer for decreeing the suit on admission. It will amount to praying to the Court for passing a decree on admission. (17) The question now is that whether there is any admission or not so as to entitle the plaintiff to have a decree for possession. The factors which deserve to be taken into consideration in order to enable the Court to pass a decree in plaintiff's favour as regards possession in such like suit. are: (a) existence of relationship of lessor and lessee or entry in possession of the suit property by defendant as a tenant; and (b) determination of such relation in any of the contingency, as envisaged in Section 111 of the Transfer of Property Act. One of the modes stated therein is by efflux of time limited by the lease. Only on unequivocal admission of the above two factors will entitle the plaintiff to a decree on admission. Admission need not be made expressly in the pleadings. Even on constructive admissions Court can proceed to pass a decree in plaintiff's favour. (18) Defendants in this case have not disputed the entry of defendant No. 1 in possession on the suit property on the basis of registered lease deed dated 24.2.1994. It is also not disputed that the period of lease as fixed in the lease deed expired on 14.2.1995. Admittedly, the plaintiff has not served any notice determining the lease since according to the plaintiff lease came to an end by efflux of time, as such the same was not required to be determined by serving any notice. Treating the lease to have expired by efflux of time on 14.2.1995, the suit was filed on 24.5.1995. The defendants have pleaded renewal that on the basis of letter Annexure 'A' dated 18.1.1995 addressed to the plaintiff, the lease stood renewed upto 14.1.1996 since on receipt of the letter the plaintiff accepted renewal. (19) The lease deed admittedly contains a renewal clause and such renewal is at the option of the lessor only and not at the option of the lessee. Clause 14 of the lease reads: "THAT the lease is for a period of 12 months. However at the option of the Lessor the lease can be renewed for a further period of Ii (eleven) months i.e. from 15th February, 1995 to 14th of January, 1996 on similar terms and conditions as agreed upon between the parties, in this lease."

(20) The plaintiff is disputing the receipt of this letter or having ever agreed to renew the lease on the same terms and conditions as contained in the lease deed dated 24.2.1994. It is stated that no communication was received from defendant No. 1 for renewal of lease.

(21) Even assuming that such a communication (letter dated 18.1.1995) was received by the plaintiff, there is nothing on record even to drawn an inference that the plaintiff ever agreed for extension. Otherwise also defendant

No. 1 being a lessee could not under the terms of lease seek extension of the lease. It was at the option of the lessor. Learned Counsel for the plaintiff contended that for the purposes of the present appeal the Court may proceed even on the assumption that as contended by the defendants there has been renewal of lease for a further period as alleged by the defendants. Accepting the plaintiff's stand that taking the plea of defendant as regards renewal of lease to have been duly accepted by the plaintiff that period of lease of the property stood extended for another period of one year on same terms, even in that case the period of such extended lease expired on 14.1.1996.

(22) The next question that incidentally would now arise is that whether it would have been necessary for the plaintiff to file a fresh suit after serving a notice of termination of the lease or treating the period of extended lease to have come to an end? Contention of the learned Counsel for the defendants has also been that on expiry of the period of renewed lease possession of defendant No. 1 will be that of a tenant holding over on month to month basis and determination of such a tenancy would be necessary by serving notice under Section 106 of the Transfer of Property Act and there is no question of determination of holding over of tenancy by efflux of time under Section 111 of the Act.

(23) For holding over of tenancy it is absolutely necessary that the lessee is allowed to continue to remain in possession of the property after expiry of the period of lease. Assuming what has been alleged by the defendants to be correct that there has been renewal of tenancy, as noticed above, for a period from 14.2.1995 to 14.1.1996, it is not the plea of the defendants in any part of the written statement that after 14.1.1996 the defendants have been allowed to continue to remain in posses- sion of the property. Holding over is an act after expiration of the term, which does not necessarily create a tenancy of any kind but gives a right to the tenant holding over to continue in possession. Section 116 of the Transfer of Property Act provides for the effect of holding over and says : "116.Effect of holding over-If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or underlessee, or otherwise assets to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year or from month to month, according to the purpose for which the property is leased, as specified in Section 106."

(24) The basis of Section 116 of the Transfer of Property Act is a bilateral contract between the erstwhile landlord and erstwhile tenant. There is no plea of holding over in the written statement for a period subsequent to 14.1.1996. We may also notice that no amount of rent was paid by the defendant to the plaintiff till the date of the filing of the suit, for the period beyond 14.2.1995 though it is alleged that the lease stood renewed from

15.2.1995 to 14.1.1996. When the appeal was taken up on 12.9.1996 in the presence of Counsel for the defendants the following order was passed on misc. application moved by the appellants : "CM3351/96 To come up for hearing on 15.1.1997. Reply if any within four weeks. Rent/damages in respect of the premises are in arrears and have not been realised to the plaintiff since 15.2.1995. Counsel for the respondent submits that the respondents are agreeable to make payment @ 18,000.00 per month until further orders. Let the arrears upto 14.9.1996 be paid by the respondent to the appellant through Counsel by means of a bank draft drawn in the name of the plaintiff on or before 30.9.96. With effect from 15.9.96 the rent/damages shall be paid month by month on or before the last day of the calendar month in the same way. This payment shall be without prejudice to the rights and contentions of the parties which are subjudice in the suit or. appeal. Cm disposed of."

(25) Even if there has been an extension of lease as pleaded by the defendants and as we have assumed, the same also expired on 14.1..1996. There was no payment made voluntary after expiry of the period as fixed in lease deed dated 24.2.1994. Under the above order payment was made for the period from 15.2.1995 onwards and admittedly for the period beyond 14.1.1996, no payment except under the above orders of the Court was made. Suit was filed prior to 14.1.1996 i.e. on 24.5.1995. Thus, there cannot be any question of the plaintiff consenting to the continuance of the defendants in occupation of the property. Thus, there is no question of holding over and moreover there is no plea of holding over after 14.1.1996. Since the extended lease also came to an end on 14.1.1996 there is absolutely no right with the defendants to remain in possession of the premises thereafter.

(26) Reference may be made to a decision of the Supreme Court in Smt. Shanti Devi v. Amal Kumar Banerjee, Air 1981 Sc 1550, wherein it was held that where the lease was for a definite period and the said period expired by efflux of time and there was no allegation of lessee holding over, in such a case there was no requirement of issuing notice for determination of the lease.

(27) We wholly subscribe to the views expressed by the learned Judges of Madhya Pradesh High Court in Shikharchand's case (supra), as followed by the learned Single Judge of this Court in S.L. Associates's case (supra) that it is open to the Court in suitable cases to afford a relief on the basis of the case as set up by the defendants. Since there is no question of any prejudice to the defendants caused, the relief legitimately springs from the case set up by him.

(28) Lease in this case having come to an end even on the defendants' plea on 14.1.1996. The defendants having no right, the plaintiff definitely is entitled to a decree for possession since no issue can be said to be arising for determination in so far as claim for possession is concerned. On this

score alone the plaintiff would be entitled to a decree on the admission contained in the written statement.

(29) Appeals accordingly are allowed. The impugned order is set aside. The plaintiff's application, Ia 4639 of 1995, is allowed to the extent that the appellant plaintiff is held entitled to a decree for possession in respect of suit premises. Defendants accordingly are directed to put the plaintiff-appellant in possession of the suit property within a period of two months from today. Decree will be drawn in accordance with law.

(30) In so far as the remaining issue as regards the ascertainment of mesne profits, since we have proceeded on the assumption that there has been a renewal of lease on the same terms as regards payment of rent as contended by the defendants, the amount admittedly paid by the defendants for the period after 14.2.1995 till 14.1.1996, under the orders of this Court dated 12.9.1996 will be liable to be adjusted towards rent at the rate of Rs. 18,000.00 p.m. The plaintiff is also held entitled to a decree for mesne profits from 15.1.1996 onwards. It will be open for the learned Single Judge now to appoint a local Commissioner for determination of the amount of mesne profits payable to the plaintiff from 15.1.1996 till date of delivery of possession. Costs will follow the event.