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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: December 02, 2016*

+ **RSA 346/2016**

GYAN CHAND

..... Appellant

Through: Mr.N.K.Aggarwal & Ms.Nupur
Sachdeva, Advocates with appellant in
person

versus

KAMLESH

..... Respondent

Through: Mr.Deepak Gupta, Advocate with
Mr.Ankush Sharma & Mr.Gaurav
Dhakar, Advocates

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT (Oral)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure has been filed against the concurrent judgment of the Courts below i.e. of the First Appellate Court dated 16th September, 2016 and of the trial Court dated 11th December, 2014 whereby the suit of the plaintiff in respect of the possession has been decreed under Order XII Rule 6 CPC.

2. After the notice of the appeal was sent to the Respondent, LCR was also requisitioned.

3. At the stage of hearing, the thrust of argument on behalf of the appellant was that instead of passing a decree under Order XII Rule 6 CPC on the basis of admission in the written statement, it has been passed on the

basis of rectification deed which has been filed subsequently by the respondent/plaintiff. Thus, it has been urged by the appellant that the findings of the Courts below suffer from perversity.

4. Following substantial question of law was formulated in this case on 21st November 2016:-

“Whether the findings of the Courts below being not based on admission are perverse?”

5. Learned counsel for the appellant, Mr.N.K.Aggarwal has submitted that the suit in respect of the relief of the possession could not have been decreed by the learned trial Court in view of the preliminary objection raised in the written statement disputing the ownership of the plaintiff or she having any right title or interest in the suit property. Learned counsel for the appellant has further submitted that in the written statement there was no admission in respect of the Shop No.4 for the reason that suit was not instituted in respect of Shop No.4 which was in his tenancy. Learned counsel for the appellant has also contended that the respondent/plaintiff purchased shop Nos.2 and 3. When the case was listed for orders on the application under Order XII Rule 6 CPC the clarification was sought by the Court and the rectification deed was filed which could not have been taken into consideration by the Court for decreeing the suit for possession under Order XII Rule 6 CPC. It has been further contended that in the absence of any admission about the relationship of the landlord and tenant between the parties in respect of Shop No.4 in tenancy of the respondent, learned trial Court could not have passed the decree for possession in respect of the tenanted shop.

6. On behalf of the respondent Mr.Deepak Gupta, Advocate has

submitted that even if the rectification deed in respect of private number of shop in property bearing No.B-11, Gulab Bagh, Village Nawada, Delhi-110059 is excluded, there is clear cut admission in the written statement not only about the relationship of landlady and tenant between the parties but also that the appellant had deposited the rent under Section 27 of Delhi Rent Control Act taking the plea that the landlady was not accepting the rent. Mr. Deepak Gupta, Advocate has further contended that irrespective of the fact that rectification deed mentioned the private number for the shop to be 4 whereas the sale documents in favour of the respondent are in respect of private shop Nos.2 and 3, the identity of the property is not in dispute and the suit property i.e. the shop in tenancy of the appellant was correctly shown in red in the site plan annexed with the plaint copy of which was supplied to the appellant/defendant. In the written statement the correctness of the site plan was not disputed. Thus, irrespective of the discrepancy, if any about the private numbers given to the shop in the sale documents or the rectification deed, so far as the appellant is concerned he was tenant in respect of one shop only which was duly identified and described in the site plan. In respect of that shop decree for possession has been passed in view of the admission by him in the written statement. Mr. Deepak Gupta, Advocate has also submitted that the provisions of Delhi Rent Control Act do not apply to the area where the suit property is situated. Thus, a suit for possession has been filed which has been rightly decreed on the basis of admission made in the written statement. Even the possession of the suit property has already been taken by the respondent/plaintiff in execution proceedings.

7. In support of above submissions, learned counsel for the respondent

has referred to the decision of Hon'ble Supreme Court in ***Payal Vision Ltd. Vs. Radhika Chaudhary, 2012 Law Suit (SC) 605*** wherein the decision in Anar Devi (Smt.) Vs. Nathu Ram, 1994 4 SCC 250 has been followed. In respect of discrepancy about the private shop number in property No. B-11, Gulab Bagh, Village Nawada, Delhi-110059, learned counsel for the respondent has relied upon the decision of this Court in ***Vijay Kumar Sharma Vs. Manoj Kumar Garg, RSA No.179/2016 decided on 20th July, 2016.***

8. While examining the findings of the Courts below, as to whether the same are based on the basis of admission made in the written statement, the rectification deed has been excluded from the consideration zone. Now the only aspect that requires consideration is whether the judgments passed by the Courts below under Order XII Rule 6 CPC can be termed as perverse. In the Civil Suit No.60/14 in para no.1 and 2 of the plaint the respondent/plaintiff claimed herself to be the owner of property No.11, B-Block, Area Gulabi Bagh, Village Nawada, Bindapur, Delhi-110059. Para no.3 of the plaint reads as under:-

“3. That the defendant was inducted as a tenant by the plaintiff's predecessor, for a portion (one 'shop') admeasuring about “5” X “12” (approximately), (correct measurement can only be filed after a proper inspection of the premises in suit, as the plaintiff is not permitted to enter in the premises in suit for the purposes of preparing site plan), on the ground floor forming part of the property bearing No.B-11, area known as Gulab Bagh, Village Nawada, New Delhi-110059 (morefully shown bounded by red colour in the rough site plan of the property), hereinafter called the suit property. Now a monthly rent of the said tenanted accommodation is ₹850/- per month (Rupees Eight Hundred and Fifty only) excluding other charges for purposes of carrying out business activities. Site plan of the

property annexed herewith as Annexure-“A”. ”

9. Corresponding para of the written statement reads as under:-

“That the contents of corresponding para 3 of suit on merits is admitted. However, it is specifically denied that the defendant has ever denied the lawful owner to inspect the property at legitimate working hours of the day.”

10. On page No.11 in para No.7 of the written statement the appellant/defendant has pleaded that he had been regularly tendering the rent to the plaintiff but the plaintiff had been refusing to accept the same thereby compelling the appellant/defendant to regularly deposit the same before the Rent Controller and there was no arrears towards rent.

11. Service of notice dated 21st March, 2014 terminating the tenancy has been held to be proved by the learned trial Court as the same was replied dated 3rd April, 2014. It has been held that even if the period of 15 days is calculated from the date of reply i.e. 3rd April, 2014 as required under Section 106 of the Transfer of Property Act, the possession of the appellant/defendant became unauthorized with effect from 19th April, 2014. Thus on the basis of admission a decree for possession was passed in respect of the shop as shown red in the site plan under Order XII Rule 6 CPC.

12. The First Appellate Court dismissed the appeal noting the following facts:-

- (i) The tenant failed to bring on record any notification that provisions of Delhi Rent Control Act extends to the area where the suit property is situated.
- (ii) The service of legal notice dated 21st March, 2014 is per se apparent as the same was replied on 3rd April, 2014.

(iii) There is admission on behalf of the appellant/tenant that he attorned in favour of the respondent/plaintiff who purchased the property vide registered sale deed.

13. Even as per the admission of the appellant/tenant he had been depositing rent under Section 27 of Delhi Rent Control Act in favour of the respondent/plaintiff which is sufficient to show her right and interest in the tenanted premises. The tenant is estopped from challenging the title of the landlord.

14. Finding no illegality or infirmity in the order passed by the learned trial Court, the First Appellate Court dismissed the appeal.

15. The legal position is well settled that for a litigant the first appeal is a matter of right. The First Appellate Court is empowered to re-appreciate the entire evidence in the light of arguments and can substitute its own findings of the fact and finding of law if the First Appellate Court is of the opinion that the findings of the trial Court are not in accordance with law or not based on facts. However, the second appeal would lie only when substantial question of law is involved. The order passed by the learned trial Court and affirmed by the learned First Appellate Court is based on admission made by the appellant in the written statement. Irrespective of the private number given to the shop situated in property No. B-11, Gulab Bagh, Village Nawada, Delhi-110059, in the written statement in para no.3 correctness of the site plan is admitted. The relationship of landlady and tenant between the parties as well attornment in favour of the plaintiff who purchased the property through registered sale deed was not disputed by the appellant/tenant. He even deposited rent in favour of respondent/plaintiff by taking recourse to the provisions of Section 27 of Delhi Rent Control Act

and pleaded specifically in the written statement that he is not in arrears of rent. Since the provisions of Delhi Rent Control Act are not applicable to the area where the suit property is situated, the landlord was required to serve a notice under Section 106 of the Transfer of Property Act which requirement has been duly complied with in this case.

16. Thus the concurrent findings of the Courts below are based on the admission made in the written statement while passing a decree for possession under Order XII Rule 6 CPC. The impugned order does not suffer from perversity.

17. The Regular Second Appeal is dismissed.

18. No costs.

CM No.42891/2016

Dismissed as infructuous.

DECEMBER 02, 2016

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PRATIBHA RANI, J.

