M/S Jeevan Diesels & Electricals Ltd vs M/S Jasbir Singh Chadha (Huf) & Anr on 7 May, 2010

Equivalent citations: AIR 2010 SUPREME COURT 1890, 2010 (6) SCC 601, 2010 AIR SCW 2937, 2010 (3) AIR KANT HCR 323, (2010) 2 WLC(SC)CVL 121, (2010) 3 CIVILCOURTC 9, (2010) 4 CAL HN 254, (2010) 5 MAD LJ 311, (2010) 3 ICC 509, (2010) 1 RENCR 532, 2010 (5) SCALE 367, (2010) 4 MAD LW 114, (2010) 2 ALL RENTCAS 293, (2010) 3 CIVLJ 765, (2010) 3 RECCIVR 217, (2010) 2 CLR 8 (SC), (2010) 6 ANDHLD 119, (2010) 4 ALL WC 3427, (2010) 81 ALL LR 222, (2010) 2 CURCC 243, (2010) 5 SCALE 367

Bench: Asok Kumar Ganguly, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4344 OF 2010
(Arising out of SLP (Civil) No.2689 of 2009)

M/s Jeevan Diesels & Electricals Ltd. ..Appellant(s)

Versus

M/s Jasbir Singh Chadha (Huf) & Anr. ..Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated 28.11.2008 passed by the High Court of Delhi in Regular First Appeal No.465 of 2008. In the impugned judgment upon admission the High Court came to a finding that a case of ejectment was made out against the appellant on the basis of admission of the case of the plaintiff-landlord in the written statement filed by appellant. In

passing the said judgment the High Court affirmed the judgment and decree of dispossession passed by the Additional District Judge, Delhi on 23.09.2008 against the appellant.

3. The material facts of the case are that the respondents-plaintiffs, claiming to be the landlords/owners of the premises bearing Flat No.205, (2nd Floor), Arunachal Building, 19, Barakhambha Road, New Delhi-110001 having area of 581 sq. ft., (super area) (hereinafter, `the suit premises') filed a suit against the appellant for recovery of possession and mesne profit. The case of the plaintiff-landlord in the plaint is that the appellant was inducted as a tenant vide lease deed dated 07.07.2003 at a monthly rent of Rs.23,200/- for a period of three years with effect from 07.07.2003. According to the respondents-plaintiffs the said lease dated 07.07.2003 was initially for a period of three years and which was to be renewed for a further period of three years as per the mutual consent of both the parties with 20% increase in the monthly rent. The main case of the plaintiff- landlord is that the said lease deed had expired by efflux of time and notice to that effect was sent to appellant which was enclosed with the plaint. In paragraph 6 of the plaint further averment is that the appellant, despite determination of its tenancy of the suit property, has failed to vacate the suit property, and handover the possession thereof to the respondents-plaintiffs.

4. The stand of the respondents-plaintiffs before the Civil Court and also the High Court and before this Court also was that the case of termination of tenancy has been admitted by the appellant in its written statement.

5. In order to appreciate this controversy it will be proper to set out the relevant averments in the plaint and written statement of the parties.

6. Paragraphs 5 and 6 of the plaint on which the respondents-plaintiffs rely are as follows:-

> "5. That the tenancy has expired by efflux of time but for the precautionary measure, the Plaintiffs vide notice dated July 15, 2006 terminated the tenancy of the Defendant, which was sent via Regd. Ad. & UPC. The aforesaid notice dated July 15, 2006 was duly served upon the defendant. The copy of said notice is annexed herewith as Annexure A-3. The registration receipt, UPC and acknowledgement card are annexed herewith as Annexure A-4 to A-6 respectively.
>
> 6. That the defendant, despite, the determination of its tenancy of the said suit property has failed to vacate the suit property and handover the possession thereof to the Plaintiffs".

7. In the written statement, which was filed by the appellant, paragraphs 5 and 6 of the plaint have been dealt with in paragraphs 5 and 6 of the written statement respectively. Those two paragraphs are set out below:-

> "5. That the contents of para 5 of the plaint are a matter of record. It is submitted that tenancy has neither expired by efflux of time nor it has been terminated.

> 6. That in reply to the contents of para 6 of the plaint, it is submitted that defendant is in possession of the premises. There has been no determination of tenancy.

8. It is clear from a perusal of the aforesaid averments in the written statement that the appellant has disputed (a) the fact of expiry of tenancy by efflux of time; (b) the appellant has also disputed that there has been a determination of tenancy. So far as receipt of notice referred to in paragraph 5 of the plaint is concerned, there has been no denial by the appellant.

9. Learned counsel for the appellant also argued before us that the lease deed cannot be terminated in view of certain clauses contained in the lease. The said argument was opposed by the learned counsel for the respondents-plaintiffs. But in the facts of this case and in view of the nature of the judgment we propose to pass we need not decide those contentions at all.

10. It may be noted herein that to the written statement filed by the appellant, the respondents-plaintiffs did not file any rejoinder. They filed an application under Order 12 Rule 6 of the Code of Civil Procedure for passing a judgment on admission. In the said petition in paragraph 4, the respondents-plaintiffs also averred as follows:-

> "4. That in view of the admission (i) On existence of relationship of landlord and tenant and there after (ii) service of the termination notice, the only question left for adjudication for the purpose of possession is "whether the termination of the tenancy has been validly terminated?"

11. To that application the appellant had given a reply.

In paragraph 2 of the reply it was again denied by the appellant that there was any admission by them about termination or determination of tenancy. In the said reply it has been stated that in the suit issues are still to be framed and the case be tried in accordance with the Civil Procedure Code as there is no admission by the appellant and the respondents-plaintiffs have to prove its case with legally admissible evidence.

As such prayer was made to dismiss the application of the respondents-plaintiffs under Order 12 Rule 6.

12. Learned counsel for the respondents-plaintiffs relied on a judgment of this Court in Karam Kapahi & Others vs. M/s. Lal Chand Public Charitable Trust & Another reported in 2010 (3) SCALE 569 and contended that in view of the principles laid down in that case, this Court may affirm the judgment of the High Court in the instant case. This Court is unable to accept the aforesaid contention. In Karam Kapahi (supra) a Bench of this Court analyzed the principles of Order 12 Rule 6 of the Code and held that in the facts of that case there was clear admission on the part of the lessee about non- payment of lease rent. The said admission was made by the lessee in several proceedings apart from its pleading in the suit. In view of such clear admission, the Court applied the principles of Order 12 Rule 6 in the case of Karam Kapahi (supra). The principles of law laid down in Karam Kapahi (supra) can be followed in this case only if there is a clear and unequivocal

admission of the case of the plaintiff by the appellant.

13. Whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision of this question depends on the facts of the case. This question, namely, whether there is a clear admission or not cannot be decided on the basis of a judicial precedent. Therefore, even though the principles in Karam Kapahi (supra) may be unexceptionable they cannot be applied in the instant case in view of totally different fact situation.

14. In Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India and others reported in (2000) 7 SCC 120 the provision of Order 12 Rule 6 came up for consideration before this Court. This Court on a detailed consideration of the provisions of Order 12 Rule 6 made it clear "wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed" the principle will apply. In the instant case it cannot be said that there is a clear admission of the case of the respondents-plaintiffs about termination of tenancy by the appellant in its written statement or in its reply to the petition of the respondents-plaintiffs under Order 12 Rule 6.

15. It may be noted here that in this case parties have confined their case of admission to their pleading only. The learned counsel for the respondents- plaintiffs fairly stated before this Court that he is not invoking the case of admission `otherwise than on pleading'. That being the position this Court finds that in the pleadings of the appellant there is no clear admission of the case of respondents-plaintiffs.

16. In this connection reference may be made to an old decision of the Court of Appeal between Gilbert vs. Smith reported in 1875-76 (2) Chancery Division 686. Dealing with the principles of Order XL, Rule 11, which was a similar provision in English Law, Lord Justice James held, "if there was anything clearly admitted upon which something ought to be done, the plaintiff might come to the Court at once to have that thing done, without any further delay or expense" (see page 687). Lord Justice Mellish expressing the same opinion made the position further clear by saying, "it must, however, be such an admission of facts as would shew that the plaintiff is clearly entitled to the order asked for". The learned Judge made it further clear by holding, "the rule was not meant to apply when there is any serious question of law to be argued. But if there is an admission on the pleading which clearly entitles the plaintiff to an order, then the intention was that he should not have to wait but might at once obtain any order" (see page 689).

17. In another old decision of the Court of Appeal in the case of Hughes vs. London, Edinburgh, and Glasgow Assurance Company (Limited) reported in The Times Law Reports 1891-92 Volume 8 at page 81, similar principles were laid down by Lord Justice Lopes, wherein His Lordship held "judgment ought not to be signed upon admissions in a pleading or an affidavit, unless the admissions were clear and unequivocal". Both Lord Justice Esher and Lord Justice Fry concurred with the opinion of Lord Justice Lopes.

18. In yet another decision of the Court of Appeal in Landergan vs. Feast reported in The Law Times Reports 1886-87 Volume 85 at page 42, in an appeal from Chancery Division, Lord Justice Lindley and Lord Justice Lopes held that party is not entitled to apply under the aforesaid rule unless there

is a clear admission that the money is due and recoverable in the action in which the admission is made.

19. The decision in Landergan (supra) was followed by the Division Bench of Calcutta High Court in Koramall Ramballav vs. Mongilal Dalimchand reported in 23 Calcutta Weekly Notes (1918-19) 1017. Chief Justice Sanderson, speaking for the Bench, accepted the formulation of Lord Justice Lopes and held that admission in Order 12, Rule 6 must be a "clear admission".

20. In the case of J.C. Galstaun vs. E.D. Sassoon & Co., Ltd., reported in 27 Calcutta Weekly Notes (1922-23) 783, a Bench of Calcutta High Court presided over by Hon'ble Justice Sir Asutosh Mookerjee sitting with Justice Rankin while construing the provisions of Order 12, Rule 6 of the Code followed the aforesaid decision in Hughes (supra) and also the view of Lord Justice Lopes in Landergan (supra) and held that these provisions are attracted "where the other party has made a plain admission entitling the former to succeed. This rule applies where there is a clear admission of the facts on the face of which it is impossible for the party making it to succeed". In saying so His Lordship quoted the observation of Justice Sargent in Ellis vs. Allen [(1914) 1 Ch. D. 904] {See page 787}.

21. Similar view has been expressed by Chief Justice Broadway in the case of Abdul Rahman and brothers vs. Parbati Devi reported in AIR 1933 Lahore 403. The learned Chief Justice held that before a Court can act under order 12, Rule 6, the admission must be clear and unambiguous.

22. For the reasons discussed above and in view of the facts of this case this Court cannot uphold the judgment of the High Court as well as of the Additional District Judge. Both the judgments of the High Court and of the Additional District Judge are set aside.

23. The matter is remanded to the trial Court for expeditious disposal of the suit as early as possible, preferably within a period of six months from the date of service of this order on the learned trial Court. It is made clear that this Court has not made any observation on the merits of the case.

24. The appeal is allowed. There will be no order as to costs.

.....J. (G.S. SINGHVI) .....J. (ASOK KUMAR GANGULY) New Delhi May 7, 2010