IN THE COURT OF ADDITIONAL DISTRICT JUDGE-03 EAST DISTRICT, KARKARDOOMA COURTS: DELHI.

Presided by: SH. RJESH KUMAR.

C.S No. 171/21

IN THE MATTER OF



SMT. KAMLA SACHDEVA, W/O DR. RAJ KUMAR SACHDEVA, R/O G-44, PREET VIHAR, DELHI-110092

.....PLAINTIFF

Versus

MR. GAURAV ARORA, S/O SHRI BRIJ BIHARI LAL, R/O G-44, FIRST FLOOR, PREET VIHAR, DELHI-110092

.....DEFENDANT

ORDER

29.08.2023

- **1.** Plaintiff has filed the present suit for possession, recovery of arrears of rent, damages/mesne profits against the defendant.
- As per plaint, plaintiff is the owner of suit property bearing no. G-44, situated at Preet Vihar, Delhi-92. The defendant was inducted as tenant in the entire first floor portion up to the extent of ceiling level comprising of three bad rooms and one drawing-cum-dying room, one kitchen, three toilets/bathroom, one balcony with one lift and one car parking a part of the aforesaid property (hereinafter referred to as 'tenanted premises'), on a monthly rent of Rs.41,000/- excluding electricity and water charges for a fixed period of 11 months, commencing from 25.11.2019 to 24.10.2020 by

virtue of rent agreement dated 26.09.2019 for residential purposes. The tenancy of the defendant/ tenant started from 25 day of each English Calender month and ended on 24 day of succeeding English Calender month. Rent was payable in advance every month. It is also averred in the plaint that the defendant proved to be habitual defaulter in making payment of rent and has neither paid nor tendered the arrears of rent of the aforesaid premises to the plaintiff w.e.f. 25.08.2020 till date despite demands. The tenancy of the said tenanted premises had already expired on 24.10.2020 but the defendant did not vacate and hand over the possession of the tenanted premises to the plaintiff despite demands and requests for the same.

- 2. The plaintiff did not want the defendant to continue as tenant in the said premises anymore and therefore by virtue of notice dated 30.12.2020 sent by the plaintiff to the defendant, the tenancy of the defendant was terminated and defendant was asked to vacate and hand over physical possession of suit premises to the plaintiff and pay arrears of rent of tenanted premises w.e.f. 25.08.2020 till 24.01.2020 @ Rs.41,000/- p.m. but the defendant failed to pay the same. Despite many requests, defendant neither paid the arrears of rent nor vacated the tenanted premises. The entire arrears of rent w.e.f. 25.08.2020 to 24.01.2021 comes to Rs.2,05,000/- and after deducting Rs.80,000/- deposited by the defendant with the plaintiff, the remaining arrears of rent comes to be Rs.1,25,000/-, which the defendant is liable to pay. The defendant is also liable to pay damages/ mesne profit for unauthorized use and occupation of the tenanted premises @ Rs.3000/- per day to the plaintiff w.e.f. 25.01.2021 till the defendant vacates the tenanted premises and hands over physical possession of the same to the plaintiff. Hence, the present suit.
- 3. The defendant filed the written statement. The defendant admitted the contents of para 2 of the plaint. Hence, the defendant admitted that the defendant was inducted in the suit property as tenant on a monthly rent of Rs.41,000/- excluding electricity and water charges for 11 months commencing from 25.11.2019. It is further contended by the defendant that

plaintiff has concealed a material fact that in the month of May 2020 plaintiff had taken a loan of Rs. 4 lakhs from the defendant for a limited time period and plaintiff further assured the defendant that she would charge nothing on account of rent in lieu of interest accrued on the said loan in addition to the security amount of Rs.80,000/- and plaintiff further assured to the defendant that she would continue to give acknowledgment of the rent paid in lieu of interest accrued upon the said loan and therefore she did not ask for the rent till 30.12.2020, and when the defendant asked her to repay the loan amount and security amount, the plaintiff concocted a false story and filed the present suit. The defendant also admitted para no. 8 of the plaint and hence defendant admitted to have received legal notice dated 30.12.2020 but the defendant contended that the said notice was totally without cause of action against the defendant. Defendant denied all other allegations as mentioned in the plaint.

Hence, it is prayed that the present suit be dismissed.

- The plaintiff has filed u/o 12 rule 6 CPC for pronouncement of 4. judgment on admission. According to plaintiff, the defendant has admitted that he is the tenant in the suit property and he is not paying rent. The defendant has been in illegal possession of the suit property since expiry of the lease deed. Defendant has not come with the clean hands. Hence, it prayed that the suit of the plaintiff may kindly be decreed.
- 5. Reply to the aforesaid application was not filed on behalf of defendant and ld. Counsel for straightaway argued on the said application and submitted that the defendant has nowhere admitted in the written statement entitling the plaintiff to move said application. It is further submitted that plaintiff has misread and misconceived the plea taken by the defendant in the written statement, therefore, the application of the plaintiff is liable to be dismissed. It is further submitted that admission should be clear, unequivocal and unambiguous. It is also submitted that defendant has not admitted anything in his written statement, which can be treated and termed as clear, unequivocal and unambiguous, therefore, the application of the plaintiff is liable to be dismissed. It is also submitted that in the month of

May 2020 plaintiff had taken a loan of Rs. 4 lakhs from the defendant for a limited time period and plaintiff further assured the defendant that he would charge nothing on account of rent in lieu of interest accrued on the said loan in addition to the security amount of Rs.80,000/- and plaintiff further assured to the defendant that he would continue to give acknowledgment of the rent paid in lieu of interest accrued upon the said loan and therefore he did not ask for the rent till 30.12.2020, and when the defendant asked him to repay the loan amount and security amount, the plaintiff concocted a false story and filed the present suit. The defendant denied the rest of the averments made in the application under Order 12 Rule 6 CPC.

- **6.** Arguments heard on behalf of the parties and perused the material available on record.
- 7. Before appreciating the rival contentions of the parties, it is necessary to refer the relevant provisions of law i.e Order XII Rule 6 of the Civil Procedure Code and Section 58 of the Indian Evidence Act which provides as under:-

ORDER XII RULE 6 -

- 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.

Section 58 of the Indian Evidence Act provides that:

"58. Facts admitted need not be proved-No fact need to be

proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings:

Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions."

The aforesaid Rule was amended by Act 104 of 1976, by which several amendments were made to the Code of Civil Procedure, 1908. Earlier to 1976 amendment, judgment on admissions was confined only on application in writing. By virtue of the amendment whether admissions are oral or in writing, court is empowered at any stage of the suit to give judgment on such admissions.

The Apex Court in case of *Uttam Singh Dugal and Co. Ltd. vs. United Bank of India 2000 (4) R.C.R. (Civil) 89* observed as under:-

"10. 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 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."

The object of the provisions of Order XII Rule 6 of the Code was also interpreted in the judgment delivered in case of *M/s Puran* Chand Packaging Industrial Pvt. Ltd. vs. Smt. Sona Devi and

another, 2009 (2) C.C.C. 39 & the Apex Court in Sona Devi's case (supra), made the following observations:-

9. A perusal of the aforesaid provision would show that before a decree on the basis of admission in the pleadings can be passed, the admission must be made by the defendant or a party to the proceedings in an unequivocal, unambiguous manner. In other words the admission should not be vague or equivocal. Another point which has to be borne in mind while passing a judgment on the basis of an admission is that the document is to be read as a whole and the Court is not to take out one or two sentences so as to treat it as an admission. Moreover passing of a judgment on this basis by the Court is a matter of discretion and not a matter of course. Reliance in this regard is placed on Maniisha Commercial Ltd. Vs. N.R.Dongrre and Anr. AIR 2000 Delhi 176.

In case of "Charanjit Lal Mehra and Ors. vs Smt. Kamal Saroj Mahajan and Anr." AIR 2005 SC 2765, the Hon'ble Supreme Court has held that order 12 Rule 6 CPC is enacted for the purpose to expedite the trials and if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute of the matter, then in such a case, in order to expedite and dispose of the matter such admission can be acted upon.

8. On perusal of pleadings of parties, it is evident that the defendant was inducted in the suit property as tenant for a monthly rent of Rs.41,000/-. The defendant has admitted that he is the tenant in the said premises. The defendant has also admitted that he did not pay the rent. However, the defendant contends that the rent was not paid because in the month of May 2020, plaintiff had borrowed a loan of Rs. 4 lakhs for a limited period and in pursuance of the same the plaintiff agreed that she would charge nothing on account of rent in lieu of interest accrued on the said loan. In the replication filed by the plaintiff, plaintiff denied to have ever received a loan of Rs. 4 lakhs from the defendant and plaintiff further contended that the question of repayment of said loan does not arise and allegations of the

defendant are false, groundless and malafide. The plaintiff however admitted to have received security of Rs.80,000/- from the defendant. The defendant in the written statement has not mentioned that any written agreement with regard to payment of loan amount of Rs. 4 lakhs was executed between plaintiff and defendant. This court is of the view that even if the defendant has given a loan amount of Rs. 4 lakhs to the plaintiff, as claimed by him in the present matter, does not entitle him to remain in the possession of the tenanted premises because he may recover the alleged payment from the plaintiff through separate legal proceedings and not in the present suit for possession, arrears of rent, damages and mesne profit.

- 9. Ld. Counsel for defendant has relied upon the judgment passed by Hon'ble Supreme court of India in Civil Appeal No. 4545/2022 (arising out of SLP (Civil) No. 13800/2021 dated 06.07.2022 in case titled as Karan Kapoor Vs. Madhuri Kumar and prayed that present application of the plaintiff be dismissed. Ld. Counsel for plaintiff submits that this judgment is based on different facts and hence does not apply in the present case.
- 10. In this judgment respondent had filed a suit for possession, arrears of rent, mesne profit alongwith pendente lite interest on the ground that appellant was the tenant in his property on a monthly rent of Rs.1,17,000/- for a period of 24 months and after expiry of 24 months tenancy was further extended for 11 months @ Rs.1,50,000/- p.m. Respondent in the said case claimed that after the expiry of tenancy, the appellant did not pay the rent and also did not vacate his property. Appellant in this case contended that after the expiry of tenancy period an agreement to sell and purchase was executed between respondent/landlord and appellant/ tenant and therefore the relation of landlord and tenant had expired and respondent cannot claim possession from the appellant and there are triable issues which needs trial and decree cannot be passed u/o 12 rule 6 CPC. Appellant had also contended that a suit for Specific Performance in relation to agreement to sell were also pending but Trial Court did not consider the same. In this case the respondent landlord had not disputed to have signed

the agreement to sell and purchase. Appellant contended that relation of appellant and respondent has been changed to seller and purchaser from landlord to tenant, after signing of the agreement to sell. Hon'ble Supreme Court of India in view of the above facts observed that there may be admission in respect to tenancy as per the lease agreement but the defence as taken is also required to be looked into by the court and there is need to decide justiciability of defence by full fledged trial.

- 11. On perusal of the Karan Kapoor judgment (supra), this court is of the view that above mentioned judgment passed by Hon'ble Supreme Court of India does not apply to the present case. In the present case case the only defence raised by the defendant is that he gave an amount of Rs. 4 lakhs to the defendant as a loan in May 2020 and when in the last week of month of December, 2020 when the defendant demanded his loan amount, the plaintiff asked the defendant to remain in the suit property till repayment of the loan. In the Karan Kapoor judgment (supra) the transaction relating to agreement to sell and purchase was related to the suit property and hence the Hon'ble Supreme Court was pleased to decide that the case needed trial and a decree under Order 12 rule 6 CPC cannot be passed. In the present case, the transaction of Rs. 4 lakhs which according to the defendant was given as a loan, is not at all related to the suit property in question. The defendant may avail remedy in law to recover his above said amount from the defendant but in the present suit only on the basis of above said transaction the defendant cannot be allowed to remain in suit property.
- 12. Moreover, except the self serving averments no document has been placed by the defendant to show that above said amount was given as security to the plaintiff to remain in possession of the suit property until above said amount is repaid. Hence, this court agrees with the contention of the ld. Counsel for plaintiff that the above mentioned judgment does not apply to the present case.
- 13. The defendant further denied the averments of the plaint. However, these denials appears to be a evasive denial. The law of pleadings

insists on specific defence and evasive denial is no defence. The question of fact meant by way of defence must be raised and pleaded. General denial which is mere denial in the written statement is not sufficient. Order 8 rule 4 & 5 of Civil Procedure Code 1908 require that denial in the written statement must be specific and not evasive.

- 14. The defendant has admitted that he is tenant in the suit premises and he is not paying rent. The defendant has also admitted the legal notice dated 30.12.2020 sent by the plaintiff. Admittedly, the monthly rent of tenanted premises is Rs.41,000/- p.m. The defendant has admitted the relationship of landlord and tenant between the parties and also the rate of rent of suit property which is more than Rs.3500/- per month. Hence, the present suit is also outside the ambit of Delhi Rent Control Act, 1958.
- Regarding the issue of termination of lease, the defendant has admitted to have received the legal notice issued by the plaintiff. The plaintiff has by way of said legal notice terminated the tenancy of the defendant and asked him to vacate the tenanted premises. Moreover, Hon'ble Supreme court of India in M/s Nopany Investments (P) Ltd Vs. Santokh Singh, 2008 2 SCC 728 held that filing of an eviction suit itself is notice to quit on the tenancy and no notice was necessary u/s 106 of Transfer of Tenancy Act in order to get a decree of eviction against the tenant. In view of said judgment, filing of the present suit by the plaintiff against the defendant is itself a notice to quit the tenancy.
- Hence, it is evident that the defendant has admitted landlord tenant relationship, monthly rent is more than Rs.3500/- which brings the present suit out of the ambit of Delhi Rent Control Act and in view of the legal notice dated 30.12.2020, the tenancy has been terminated. In view of the same, the plaintiff is entitled to recovery of possession of the tenanted property. But this court is of the view that granting of damages/ mesne profit is subject matter of trial and this can only be granted after evidence from both the sides are led in this regard.
- 17. In view of the above discussion, from the pleading of parties and documents, it is admitted position that defendant has not been able to

raise any triable issue which requires evidence. It is crystal clear that all the requirements as to passing of judgment on admission u/o 12 rule 6 CPC have been fulfilled and it has been established. Thus, it is apparently clear that there is clear and unambiguous admissions on the part of defendant and in view of the same, the plaintiff is entitled to possession of the suit property. Hence, application u/o 12 rule 6 CPC filed by the plaintiff is allowed.

RELIEF

18. In view of above discussion, plaintiff has been able to prove her case. Hence, the following order:

ORDER:

- A) A decree of possession is passed in favour of plaintiff and against the defendants in respect of suit property i.e. the entire first floor portion upto the extent of ceiling level comprising of three bed rooms, one drawing-cum-dying room, one kitchen, three toilets/ bath rooms, one balcony with one lift and one car parking, a part of property bearing No. G-44, situated at Preet Vihar, Delhi-110092. Defendant is directed to handover peaceful and vacant possession of the said property to the plaintiff within 45 days, failing which decree of possession shall be executed in accordance with law.
- b) A preliminary decree be prepared accordingly.

Put up for further proceeding for inquiry into other reliefs regarding damages/ mesne profits on 25.10.2023.

Typed to the dictation directly, corrected and pronounced in open court on 29.08.2023

(Rajesh Kumar)
Additional District Judge-03,
East/KKD Courts, Delhi.