

IN THE COURT OF SH. AJAY GARG,
ADDITIONAL DISTRICT JUDGE- 01,
EAST DISTRICT, KARKARDOOMA COURTS, DELHI

C.S. No.: 918/18
CNR No.DLET01-008537-2018

In the matter of:

L.N Gulati
S/o Late Shri G.D. Gulati
R/o BW-82B, Shalimar Bagh,
Delhi-110088

.....Plaintiff

Versus

Shri Surinder Kumar Mehra (Now Deceased)
S/o Late Shri S.C. Mehra,
Flat No.C-2/5, Plot No.53, Mangla Apartment,
Patparganj, IP Extension, Delhi-110092

Through LRs

- a. **Ms. Madhu Mehra,**
W/o Late Sh. Surinder Kumar Mehra,
R/o Flat No.C-2/5, Plot No.53,
Mangla Apartment, Patparganj,
I.P. Extension, Delhi-110092
- b. **Sh. Kshitiz Mehra**
S/o Late Sh. Surinder Kumar Mehra,
R/o Flat No.C-2/5, Plot No.53,
Mangla Apartment, Patparganj,
I.P. Extension, Delhi-110092
- c. **Daughter**
Her details are not known to the plaintiff.

.....Defendants

Date of institution of the suit	: 24.11.2018
Date of filing of app. U/O 12 Rule 6 CPC	: 25.05.2023
Date of reserving order	: 06.03.2024
Date of disposal of app. U/O 12 Rule 6 CPC	: 06.03.2024

ORDER

1. Vide this order, I shall dispose off the application Under Order XII Rule 6 CPC filed by the plaintiff.

FACTUAL MATRIX:

2. Brief facts of the case are that the plaintiff is the absolute owner of property bearing Flat No.C-2/5, 2nd Floor, Plot No.53, Mangla Apartment, Patparganj, I.P Extension, Delhi-110092 consisting of three bedrooms, one drawing and dining room, two bathrooms, one kitchen and store (hereinafter referred to as “**suit property**”). In the year 2001, the defendant approached the plaintiff to take the suit property on rent and after considering the request of defendant, the plaintiff let out the suit property to defendant initially for a period of 11 months i.e. from 02.09.2001 to 01.08.2002 at a monthly rent of Rs.4,000/- payable in advance on or before 5th day of every English calendar month for which defendant deposited security amount of Rs.13,750/- in favour of the plaintiff. During license/rent agreement period, the defendant regularly paid the rent to the plaintiff even after expiry of said agreement. Thereafter, parties entered into license agreements dated 06.09.2003, 13.08.2004 and 02.09.2005 at a monthly rent of Rs.4500/- payable in advance on or before 5th day of every English calendar month.

In the year 2008, the monthly rent was enhanced and the defendant paid the enhanced rent of Rs.9,000/- to the plaintiff for March, 2008 vide cheque bearing No. 754897 but the same got dishonoured with the remark “exceed the arrangement” vide

returning memo dated 12.03.2008, however, the said amount was paid by the defendant in cash to the plaintiff. Thereafter, in the year 2010, the monthly rent was enhanced from Rs.9,000/- to Rs.10,500/- but from May, 2010 onwards, the defendant became irregular in paying the enhanced rent and frequently started delaying the same on the pretext of financial constraints. Thereafter, the monthly rent was again enhanced to Rs.12,000/- per month from January, 2011 onwards, but the defendant stopped paying the enhanced monthly rent w.e.f. January, 2011. After repeated requests made by the plaintiff, the defendant paid only Rs.12,000/- each for the month of January to April, 2011 on 04.07.2011, 26.07.2011 and 08.09.2011 respectively and Rs.24,000/- on 19.01.2012 to the plaintiff for the month of May & June, 2011.

Thereafter, plaintiff visited United States to meet his son due to which he could not visit the defendant personally. Thereafter, despite repeated requests, the defendant handed over a cheque bearing No. 211276 dated 07.11.2012 of Rs.1,00,000/- to the plaintiff drawn on Corporation Bank in November, 2012 in order to clear part rental dues for the period from July, 2011 to November, 2012 but the same got dishonoured on the ground of “insufficient balance”. Despite dishonouring of said cheque, the defendant agreed to enhance the monthly rent from Rs.12,000/- to Rs.15,000/- from January, 2013 onwards. On 10.02.2013, wife of defendant, namely, Ms. Madhu Mehra issued a cheque bearing No.213576 of Rs.30,000/- drawn on Corporation Bank, Patparganj Branch for part payment of overdue monthly rent but the said cheque also got dishonoured on the ground of “insufficient funds” vide returning memo dated 12.02.2013.

Even after dishonour of said cheques, the plaintiff made several requests to the defendant to clear the outstanding arrears of rent but all in vain. After several false assurances, the defendant issued another cheque bearing No.211279 dated 29.06.2013 of Rs.60,000/- drawn on Corporation Bank, Patparganj Branch for part payment of overdue monthly rent but the same also got dishonoured due to “insufficient funds” vide returning memo dated 29.06.2013. Subsequently, time and again the plaintiff contacted the defendant to recover the long overdue arrears of rent but the defendant kept delaying the same on one pretext or another. Despite several requests and reminders, the defendant paid only a sum of Rs.20,000/- in cash to the plaintiff on 21.12.2016. In May, 2018, the plaintiff again visited the defendant at his premises and the defendant informed that he wishes to apply personal loan of Rs.8 lakhs to make the overdue payment of arrears of rent but despite the same, the defendant did not make the payment of outstanding amount. Thereafter, on inquiry from the other members of society, it was revealed that the defendant along-with other family members has manipulated the fact and falsely spread the word that the said premises belongs to the defendant. Thereafter, plaintiff sent a written notice to the defendant in June, 2018 for initiation of criminal and civil proceedings which was replied by the defendant vide reply dated 23.07.2018 through his counsel which was totally sham, frivolous and vexatious in nature and incomplete contradiction to the correct factual matrix. Thereafter, it came to the knowledge of the plaintiff from a neighbour that the defendant is in the process of alienating the premises and creating third party rights by selling off the premises. The

defendant drastically failed to fulfill his obligation and has not paid the rent regularly to the plaintiff from July, 2011 onwards barring Rs.20,000/- paid in December, 2016. The defendant is residing with his family in an illegal and unauthorized manner since July, 2011 onwards as no fresh agreement has been entered between the plaintiff and defendant. The tenancy of the defendant expired on 30.06.2007 by efflux of time, however, since the defendant did not wish to vacate the suit property, a legal notice under Section 106 of Transfer of Property Act dated 19.09.2018 was served upon the defendant but the said notice was neither replied by the defendant nor the peaceful possession of the suit property was handed over to the plaintiff. Hence, this suit.

3. On notice, defendant appeared and filed his written statement wherein he took the preliminary objections on the ground that the plaintiff has not come before the court with clean hands; the plaintiff has not valued the suit according to the relief/prayer made therein. The rent/license agreement are not enforceable before the court of law since the documents *prima facie* are not valid documents as the stamp papers neither bear its numbers nor appear to be photocopy of the original. Even the stamp paper does not bear the seal of the vendor and more so. It is submitted that there is no license agreement between plaintiff and defendant and the defendant is in the possession of the property since 2001 and since then, a substantial period of 18 years has elapsed without any legal action being taken by the plaintiff for the eviction except this plaint. Thus, defendant claims adverse possession in the disputed property. The plaintiff has wrongly and illegally claimed the outstanding rent way back

from July, 2011 up to November, 2018 which is beyond the limitation period as provided under the law of limitations.

On merits, it is submitted that the defendant approached the plaintiff and resided in the suit property at the monthly rent of Rs.4,000/- w.e.f. 02.09.2001 to 01.08.2002. However, in August, 2002, the plaintiff entered into verbal agreement to sell the suit property to defendant and received Rupees Twenty Lakhs in cash from the defendant and undertook to execute the sale deed in favour of the defendant but till now, he failed to do the same. Even the license agreements are only notional having no legal sanctity due to legal lapses. Further, the defendant was living in the suit property under the expectation that the plaintiff will transfer the suit property in his name but kept ignoring on the pretext of getting the property converted into freehold from DDA. Besides this, all other averments of the plaint were denied and prayer to dismiss the suit with cost was made.

4. Replication to the written statement of defendant was filed by the plaintiff in which the averments of the written statement were denied specifically and the contents of the plaint were reiterated and reaffirmed.

ISSUES:

5. From the pleadings of the parties, following issues were framed for adjudication on 07.05.2019:-

1. *Whether the plaintiff is entitled for the decree of eviction as claimed in prayer clause a) of the plaint? OPP.*
2. *Whether the plaintiff is entitled for the decree of Rs.12,16,000/- along-with interest pendente lite and future*

*@ 15% p.a as claimed in prayer clause b) of the plaint?
OPP*

3. *Whether the plaintiff is entitled for the directions against the defendant for payment of damages/mesne profit @ Rs.15,000/- per month w.e.f. September 2018 and till actual vacation of the premises, as claimed in prayer clause c) of the plaint? OPP.*
4. *Whether the suit is undervalued for the purposes of court fee and jurisdiction?OPD.*
5. *Relief.*

6. Thereafter, the plaintiff filed the present application under Order XII Rule 6 CPC for passing the judgment on the basis of the admissions made by the defendant. The plaintiff averred in the application that the relationship of landlord and tenant and rate of rent have been admitted by the defendant and thus, the plaintiff is entitled for a decree of possession and recovery of arrears of rent. On these premise, the present application has been filed by the plaintiff.

7. Reply to the said application was filed by the defendant in which the contents of written statement were reiterated and prayer for dismissal of the application with cost was made. It is submitted that there is no admission in the written statement or otherwise.

8. Arguments heard at length on the application. Record perused. Considered.

9. Ld. counsel for the plaintiff argued that in order to decide the application under Order XII Rule 6 CPC in a suit for recovery of possession from the tenant under general law, the

landlord is required to establish:

- i. The existence of the jural relationship of landlord and tenant between the parties.
- ii. The termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act.

10. Ld. Counsel further submitted that the plaintiff let out the suit property to the defendant initially for a period of 11 months from 02.09.2001 to 01.08.2002 as admitted by the defendant in the para-wise reply of his written statement. Thereafter, subsequent rent agreements were executed between the parties after expiry of every 11 months. The last part payment of Rs.20,000/- was made by the defendant on 21.12.2016 on the assurance that the defendant will vacate the premises in August, 2017 as his son has booked a flat in Noida. Ld. Counsel for plaintiff submits that in view of the unambiguous categorical admission, both the ingredients are duly established. Thus, plaintiff is entitled to decree of possession, recovery of arrears of rent and damages/mesne profits under Order XII Rule 6 CPC. In support, she relied upon following case laws:-

- i. Mahinder Pal Singh Vs. Ali Hussain Khan 2012 (187) DLT 379, decided by the Hon'ble Delhi High Court on 01.12.2011.*
- ii. Hansraj Vs. Jagminder Singh & Ors. 2017(8) AD (Delhi) 483, decided by Hon'ble Delhi High Court on 22.09.2017.*
- iii. Vishal Builders Pvt. Ltd. Vs. DDA 2006(130) DLT 667, decided by the Hon'ble Delhi High Court on 26.05.2006.*
- iv. Darshan Arora Vs. Vijay Kumar CM(M)429/2020 & CM*

***Appln. 20823/2020 decided by Hon'ble Delhi High Court
on 17.11.2020.***

Per contra, Ld. Counsel for defendant submitted that the principles of Order XII Rule 6 are not applicable in the instant case because there is no admission in the written statement. The plaintiff intended to sell the suit property to the defendant for which the defendant paid the sale consideration of Rs.20 lakhs in cash to the plaintiff but no receipt was issued by the plaintiff. After receiving the sale consideration amount, the plaintiff skipped away to USA assuring that on his return, he would execute the sale deed after getting the property free-hold for which cheque of Rs.1 lakhs and Rs.60,000/- etc. were issued by the defendant which got dishonoured. The plaintiff did not execute the renewed license agreements regularly and remained a silent spectator because there was consideration in between and false undertaking. He further submitted that the alleged license agreements are only notional having no legal sanctity as suffering from many legal lapses. He further submitted that the averments made in the written statement raises triable issues and as such judgment on admission under Order XII Rule 6 CPC cannot be passed as held in case titled as “***R.K. Makan Vs. Rajiv Kumar Makan***”, by Hon'ble Delhi High Court wherein it is so held:

“.....For passing a decree on the basis of admission of the defendants in the pleadings, law is well settled that the admission has to be unequivocal and unqualified and the admission in the written statement should also be taken a whole and not in part”

He further submitted that the statement under Order X CPC may not be construed to surpass the contents and intents of written statement when read between the lines. The admissions

are to be gathered from the written statement only and not from any other source for the purpose of Order XII Rule 6 CPC.

11. Submissions heard. Record perused. Considered.

12. Before advertng any opinion, let us examine the scope of Order XII Rule 6 CPC. Order XII Rule 6 lays provision for judgment on admission :

'6. Judgment on admissions.-(1) Where admissions of fact have been made either in the pleadings 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.'

13. The Hon'ble Supreme Court of India in a case titled as *Payal Vision Ltd. Vs. Radhika Choudhary (2012) 11 Supreme Court Cases 405* has held that:-

“7. In a suit for recovery of possession from a tenant whose tenancy is not protected under the provisions of the Rent Control Act, all that is required to be established by the plaintiffs landlord is the existence of the jural relationship of landlord and tenant between the parties and the termination of the tenancy either by lapse of time or by notice served by the landlord under Section 106 of the Transfer of Property Act. So long as these two aspects are not in dispute the court can pass a decree in terms of Order 12 Rule 6 CPC.

14. In the light of the law laid down with respect to the ambit and scope of Order XII Rule 6 CPC, let us examine the

case of the defendant and from the averments/submissions, if the court comes to the conclusion that the same amounts to admissions unequivocal and clear, the decree on the admissions of the defendant can be passed.

15. Though defendant admitted to be inducted in the suit property as a tenant @ Rs.4,000/- per month for the period w.e.f. 02.09.2001 to 01.08.2002 but took the defence that thereafter, plaintiff entered into a verbal agreement to sell the suit property to the defendant and received consideration of Rs.20 Lakhs against the same. Since then, the defendant had not paid any rent to the plaintiff and residing in the suit property under the expectation that the plaintiff will transfer the suit property in his name but plaintiff kept ignoring the same on one pretext or another. Thus, he is residing in the suit property under the verbal agreement to sell. Further, he also claimed adverse possession over the suit property since he is enjoying the interrupted possession for the past more than 17 years without payment of rent. Further, the defendant took the defence that the subsequent license agreement executed between the parties were notional and does not have any legal sanctity in the eyes of law. Apart from this, he denied having made any payment on account of rent to the plaintiff and claimed possession over the suit property on the basis of verbal agreement to sell and consideration being paid.

At this stage, I am reminded of the judgment passed by Hon'ble Delhi High Court in similar facts in case titled as "*Hari Gopal Manu Vs. B.S. Ojha*", RFA No.388/2015 decided by Hon'ble Delhi High court on

10.02.2016, wherein the Hon'ble High Delhi Court while relying upon the earlier precedence in case titled as "***M/s. Jagdambey Builders Pvt. Ltd. Vs. J.S. Vohra***", ***MANU/DE/0310/2016***, held so:-

*17. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondent/plaintiff is found to have agreed to sell the property let out to the appellant to the appellant, the appellant/defendant would not get any right to occupy that property as an agreement purchaser. This Court in *Jiwan Das Vs. Narain Das AIR 1981 Delhi 291* has held that in fact no rights ensue to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the appellant has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.*

18. Section 53A of the Transfer of Property Act, 1882 codifies the doctrine of part performance. A purchaser of immovable property, who in pursuance to an agreement to sell in writing has been put into possession of the property, is entitled to so remain in possession. However, the writings relied upon by the appellant in this regard, even if were to be looked into (notwithstanding the contention of the counsel for the respondent that the same were not brought before the Trial Court), do not record the possession of the premises having been delivered to the appellant in pursuance to or in part performance of the agreement to sell. The writings do not even state that the appellant shall be entitled to continue in the premises free of rent as has been pleaded.

23. Once it is found that the appellant was not delivered possession of the premises in his tenancy in part performance of the agreement to sell or that owing to the agreement to sell being not registered, the plea of being in possession of the premises in part performance is not open to the appellant for the reason of there being no registered agreement to sell, the only inference is of the appellant having continued in possession of the premises as a tenant.

24. Section 108B(q) of the Transfer of Property Act as aforesaid imposes an obligation on the tenant to deliver possession to the landlord. Only if the landlord after inducting a person as a tenant in the premises thereafter agrees to sell the premises to the tenant and in part performance of the said agreement to sell delivers possession of the premises to the tenant, will it be

deemed that the tenant had delivered back possession of the premises to the landlord for the landlord to thereafter put the tenant into possession of the premises in part performance of the agreement to sell. Once, there is no delivery of possession of the premises in part performance of the agreement to sell, the only inference is that the person continues in the same status as earlier i.e. as a tenant.

25. The principle, "once a tenant always a tenant" can also be invoked in this respect. This Court in M.R. Sawhney Vs. Doris Randhawa AIR 2008 Delhi 110 (SLP No. 13820/2008 whereagainst was dismissed on 22 nd October, 2010) held "ex-facie, once a tenant always remains tenant, unless the status changes by contract or by operation of law". As far back as in Abdul Hakim Mia Vs. Pana Mia Miaji AIR 1919 Calcutta 293 (DB) also it was held that the lessee cannot alter the character of his possession and that if the plaintiff inducted the tenant into possession, obviously the character of the possession could not be altered, without the consent of the plaintiff.

In view of the law down by the Hon'ble Delhi High Court, I am of the considered opinion that the contention of the defendant that he has been in continuing possession of the suit property on the basis of a verbal agreement to sell, does not hold water in view of Section 53A of Transfer of Property Act read with Section 17 of Indian Registration Act and Stamp Act which warrants registered written instrument. Meaning thereby, since the defendant was inducted as a tenant, he remains a tenant until his status is changed by contract or by operation of law. Therefore, in the absence of any written instrument recording the agreement to transfer the property in question, the defendant has no right to claim possession on the basis of a verbal agreement to sell.

As far as claim of adverse possession is concerned, the same is not applicable to a tenant specially when he has not denied the execution of renewed license agreement from time to time. However, as far as relief of

admitted rent is concerned, since the defendant has not admitted the non-payment of rent and rather, took the plea that he has already paid Rs.20 lakhs, the plaintiff is not entitled to any admission judgment on the aspect of rent. Thus, all the contentions raised by the defendant to retain the possession stands rejected.

16. Thus, plaintiff is entitled for possession. Reliance in this regard can be placed in case titled '**Ashok Bagga Vs. Rajvinder Kaur PFA 226/2020 & CM Appeal 20247/2020 dated 07.04.2021**' wherein Hon'ble High Court while relying upon **Surjit Sachdev V. Kazakhstan Investment Services Pvt. Ltd. 66 (1997) DLT 54 (DB)** held as under :

17....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 an 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.

Further in **Hill Elliott & Co Vs. Bhupinder Singh, 2011 (121) DRJ 438 (DB)** it was held :

18. If in a case like the present one, a dishonest litigant is permitted to delay the judgment on the ground that he would show during the trial that he had not received the notice, the very purpose of the amendment in the provisions would be frustrated."

*viii. In **State Bank of Patiala Vs. Chander Mohan Jain, 1996 RLR 404** the Division Bench observed that it has become quite common for tenants, whose tenancies have been terminated validly, to continue*

occupation as trespassers, drive the landlords to file suits for eviction with a view to see how far the patience of landlord may last or how far the landlords or their legal representatives could fight the tenants particularly where the tenant has stopped payment even of the admitted rent.”

17. Therefore, in view of the law laid down by the Hon'ble High Court and the above discussions, it is held that the plaintiff is entitled for admission judgment as far as relief of possession under Order XII Rule 6 CPC is concerned.

Accordingly, the suit of the plaintiff is decreed to the extent thereby directing the defendant to handover the vacant peaceful possession of the suit property i.e. Flat No. C-2/5, 2nd Floor, Plot No.53, Mangla Apartment, Patparganj, I.P. Extension, Delhi-110092 as specifically shown in red colour in the site plan, to the plaintiff immediately.

18. In these circumstances, the application under Order XII Rule 6 read with Section 151 CPC is disposed off as allowed.

Decree sheet shall be drawn in accordance with this order passed today on payment of deficient Court fee, if any.

Announced in the open court

On 06.03.2024

**(Ajay Garg)
Additional District Judge-01,
East District/KKD Courts/Delhi**