

**IN THE COURT OF SH. GAURAV RAO, ADJ-03 / NEW
DELHI DISTRICT, PATIALA HOUSE COURTS, NEW
DELHI.**

CS No.128/23

CNR No. DLND01-003180-2023

Sh. Rabindra Nath Ghosh

Through Ms. Meenakshi Ghosh

(Authorized Representative)

R/o DDA Flat No. 1163, Sector-D,

Pocket 1, Vasant Kunj,

New Delhi-110070.

Mobile No.9818092453

.....Plaintiff

Vs.

Shri Dhairya Kohli

s/o Sh.Kamal Kohli

R/o DDA Flat No. 2055, Third Floor,

Sector-D, Pocket 2, Vasant Kunj,

New Delhi-110070.

Mobile No.9910503560

.....Defendants

Date of institution	: 03.04.2023
Date on which reserved for judgment	: 20.10.2023
Date of decision	: 20.10.2023
Decision	: Suit for possession decreed under Order XII Rule 6 Code of Civil Procedure 1908

ORDER/JUDGMENT

20.10.2023

Present: Ld. Counsel Sh. Nadeem Abbasi for the plaintiff
along with AR of the plaintiff.

Ld. Counsel Sh. Shaurya Mittal for the defendant.

Reply filed by the plaintiff to the application moved
by the defendant under Order 9 rule 7 CPC. Copy supplied.
Arguments heard at length.

Brief facts of the case

1. The present suit has been filed by the plaintiff seeking possession as well as recovery of arrears of rent, damages for use & occupation of property bearing no. DDA Flat No. 2055, Third Floor, Sector-D, Pocket 2, Vasant Kunj, New Delhi-110070 (hereinafter referred to as the suit property).

Plaintiff's version

2. It is the case of the plaintiff that he is the owner/landlord of the suit property comprising of two bedrooms, one kitchen, two toilets, one study room & one puja room along with fitting & fixtures and the same was let out to the defendant on lease/rent for 11 months vide agreement dated 09.01.2021

w.e.f. 15.01.2021 to 14.12.2021.

2.1 It is further his case that the defendant did not pay the rent for the period 15.11.2021 to 15.12.2021 as well as 15.12.2021 to 15.01.2022 and adjusted the security deposit towards rent while assuring him to vacate the suit property within 4/5 months.

2.2 It is further his case that the defendant did not pay the rent for the period 15.01.2022 to 15.05.2022 and accordingly he issued a notice dated 05.05.2022 calling upon the defendant to clear the pending dues and though the defendant wrote a letter dated 17.05.2022 seeking renewal of lease, however, the request of the defendant was declined by him.

2.3 It is his case that on his repeated requests as well as complaints to the police, the defendant paid only 3 months arrears/rent and started demanding money from him/his son for vacating the suit property.

2.4 It is further his case that he issued legal notice dated 07.10.2022 to the defendant for payment of arrears of rent, maintenance charges as well as for vacating the suit property but to no avail.

2.5 With this background the present suit has been filed by the plaintiff.

Defendant's version

3. Despite due service, the defendant failed to appear before the court on 02.06.2023 and was accordingly proceeded ex parte. The matter was adjourned for ex parte PE for 04.08.2023.

3.1 On 04.08.2023, Ld. Counsel for the defendant appeared in the court and undertook to file memo of appearance/vakalatnama on behalf of the defendant which was accordingly filed on 11.08.2023. The matter was adjourned from 04.08.2023 to 22.09.2023 and in between i.e. on 21.09.2023 defendant had moved an application under Order IX Rule 7 CPC seeking to set aside ex parte order dated 02.06.2023 along with his written statement which was further accompanied with an application under Order VIII Rule 1 CPC r/w section 151 CPC seeking condonation of delay in filing the written statement.

4. As far as application under Order IX Rule 7 CPC is concerned, it is the defendant's case that though he was not present at the suit property on account of his employment at Gurgaon, however, his mother was present and despite her

requests to the post office employee/courier service employee to handover the court notice to her, the same was not handed over to her. The relevant portion of the application is reproduced hereunder:-

“4. That the Defendant's mother, a senior citizen, is sometimes present at the residential address of the Defendant during the said hours of the day. During such time when she has been present at the said residential address of the Defendant, a person from the courier service/ post office had visited the residential address of the Defendant twice. However, the said person refused to hand over the court notice to the mother of the Defendant, and refused to give any information about the matter. Therefore, it has been falsely stated that the persons available at the residential address of the Defendant refused to accept service, whereas it is the person effecting service who refused to hand over the court- issued notice to the mother of the Defendant.”

4.1 As far as the above averments are concerned, the submissions made by the defendant are factually incorrect and contrary to the record. The process sent through registered post/AD was refused to be accepted by the person found at the suit property. The post office employee had visited the suit property repeatedly i.e. on 21.04.2023, 24.04.2023, 25.04.2023, 26.04.2023, 27.04.2023 & 28.04.2023 and every time the process was refused to be accepted. It was refused on the ground that the process will be accepted by the addressee only. Therefore there was refusal to accept the service/process and refusal is deemed service in the eyes of law. The report on the registered cover reads as under:-

“2055 D2 mein baar-baar jaane per waha per bolte hai k praptkarta abhi yaha per nahi aur ab kab tak aayega usska koi

pata nahi hai aur yeh hum letter nahi le sakte jiske naam se wahi lenge aur phone karne per praptkarta phone nahi utha raha hai. Atah wapas.

2055 D2 mein baar-baar jaane per waha per bolte hai ki praptkarta abhi yaha per nahi kab tak aayega usska koi pata nahi aur yeh letter hum nahi le sakte hai jiske naam se wahi lenge aur phone karne per praptkarta phone nahi utha raha hai. Atah wapas.”

4.2 It is also mentioned in the application as under:-

“5. That further, it has been observed in the order dated 02.06.2023 that the Defendant was served the court-issued notice on Whatsapp. However, the Whatsapp message containing the court-issued notice was sent to the Defendant on 31.05.2023 vide an unknown number being +91 9999569673. It is submitted that the Defendant has been a victim of cyber fraud in the past and therefore, to exercise caution does not open messages, let alone attachments contained in messages, sent from numbers unbeknownst to him.”

4.3 As far as said averments are concerned, I have gone through the report of the Process Server. The Process Server too had visited the suit property twice i.e. on 21.04.2023 and 31.05.2023. On 21.04.2023 the premises was found locked and on 31.05.2023 the defendant's sister namely Ms. Palak was found at the property and she too refused to accept the process. Why Ms. Palak refused to accept the process could not be explained by the defendant. As she refused to accept the process, the Process Server served the summons/process on the mobile number of the defendant through whatsapp. The report of the Process Server is accompanied with the screen-shot of the mobile phone proving the delivery of the process upon the defendant.

The defendant has admitted the fact that the process/summons were served upon him through whatsapp and his contention that he did not check the message as he has been a victim of cyber fraud in the past is nothing but an absolute falsehood and an afterthought just to hoodwink the court and get the relief. Fact remains that his family members refused to accept the process and and he failed to appear in the court despite service through whatsapp.

4.4 In addition to the above the plaintiff has filed an affidavit coupled with tracking report, screen shot of whatsapp, postal receipts etc. showing service upon the defendant. The coloured screen-shot on record clearly proves that the summons were duly received, opened and checked by the defendant. So despite due knowledge the defendant did not bother to appear in the court and contest the case. He was therefore rightly proceeded exparte.

4.5 Add to it the fact that though the defendant appeared through his counsel on 04.08.2023, however, no WS was filed on the said day and for that matter within 30 days of the said date i.e. on or before 04.09.2023. The WS was filed only on 21.09.2023 and exactly same reasons have been assigned for delay in filing the WS as in the application under Order IX Rule 7 CPC. There is no reasonable justification coming forward for the delay, no sufficient cause has been assigned for not filing the

written statement on time. All this reflects a lot on the conduct of the defendant.

4.6 Accordingly, application under Order IX Rule 7 CPC being absolutely devoid of merit stands dismissed. Allowing application of the present nature would lead to travesty of justice and embolden unscrupulous litigants who intend to take the judicial process for a ride and misuse the process of law. If the application is allowed this court will fail in its solemn duty to safeguard the right of an innocent citizen and also to maintain the majesty of law. In view of the above discussion the application under Order VIII Rule 1 CPC also being devoid of merits stands dismissed.

5. It is to be seen that the plaintiff is a senior citizen, around 84 years old. This is a suit for possession filed by the plaintiff in the capacity of owner/landlord of the suit property and the defendant is a tenant. During the course of arguments on application under Order IX Rule 7 CPC the following facts remained admitted/undisputed by the Ld. Counsel for the defendant:-

- A. The relationship of landlord and tenant between the parties.
- B. The fact that the suit property was let out vide lease agreement dated 09.01.2021. Duration of lease as per

the lease agreement was 11 months only and it expired on 14.12.2021. Though it was argued by Ld. Counsel for the defendant that there was an oral understanding between the parties that duration of lease would be of minimum two years, however, in view of lease agreement dated 09.01.2021 the argument regarding the lease being for two years is untenable in the eyes of law. No oral evidence is permitted viz-a-viz the written document i.e. lease agreement dated 09.01.2021.

- C. The defendant has not been paying the rent since June 2021 but still is in use & occupation of the suit property (in fact para 10 and 11 of the written statement coupled with the documents annexed therewith which otherwise has not been taken on record contain ample proof of the above factual position).

5.1 In fact during the course of arguments, Ld. Counsel for the defendant vehemently argued while relying upon Annexure D4 and D5 that pressure was being exerted upon the defendant to clear the arrears as well as vacate the suit property. However, the said argument has absolutely no bearing as regards the plaintiff's entitlement to seek possession of the suit property. Plaintiff being a senior citizen, having suffered at the hands of

the defendant was not completely wrong in approaching Delhi Police for redressal of his grievances. Though the dispute being civil in nature, Delhi Police/police officials have no role in getting the suit property vacated, however, the plaintiff approaching them was on account of harassment suffered by him/senior citizen at the hands of his tenant. Most importantly the plaintiff had approached the police officials much after the expiry of lease period. The lease expired on 14.12.2021 and the plaintiff approached the police somewhere in June/July 2022 i.e. after 6/7 months.

5.2 In fact Ld. counsel for the defendant himself specifically pointed out whatsapp chats exchanged between the parties and the defendant in those chats had undertaken to vacate the suit property way back in April/May 2022. Though at the same time his own messages to a great extent reveals that he was trying to extort money from the plaintiff/landlord for vacating the suit property. Same is highly deplorable, absolutely unacceptable and reflects a lot upon the conduct of the defendant. Some of the messages filed by the defendant on record are reproduced hereunder:-

“26/03/2022, 11:56 - Dhairya Kohli: Yes

26/03/2022, 11:57-Dhairya Kohli: I will vacate by 29th

*28/04/2022, 13:27-+81 80-3177-6563: Dear Dhairya what time t mow 29 th shd we collect the keys from you?
thanks and regds*

Amitava

*28/04/2022, 13:41 - **Dhairya Kohli: Hi amitava ji, i will vacate the house on 6th may friday** because the house that we will be*

moving to has some stuff in it which the landlord will clear, so its confirmed and ive already paid them the token amount as well, so for sure we are vacating on the 6th

28/04/2022, 13:42-Dhairya Kohli: Now i would request you to please help us out with expenses for shifting that would occur

28/04/2022, 13:44-Dhairya Kohli: Total expenses are coming around 170000

28/04/2022, 13:44-Dhairya Kohli: But 140000 is what I would need

28/04/2022, 13:44 - Dhairya Kohli: The rest ill bear

28/04/2022, 13:45-Dhairya Kohli: Once i sign the agreement also on this weekend

28/04/2022, 13:45- Dhairya Kohli: Ill show you the proof as well

28/04/2022, 13:45- Dhairya Kohli: To assure you

28/04/2022, 13:45-81 80-3177-6563: will call you dhairya ji in one hr

28/04/2022, 13:45- Dhairya Kohli: Ok uncle

28/04/2022 14:32-+81 80-3177-6563: Missed voice call

02/05/2022, 14:45- Dhairya Kohli: Hello amitav ji, i will vacate the flat on friday. So i will hand you over the keys on friday evening itself once we have moved out all our stuff. But i need to take this forward with the other landlord too

otherwise i may miss out on that flat so please by tomorrow transfer me the amount 140000 nothing more nothing less and we can close this once and for all.....

04/05/2022, 06:04 - Dhairya Kohli I am gonna need the compensation amount otherwise i will miss out on this flat and the shifting will get delayed again. I have to make a call by today evening

04/05/2022, 06:04 - Dhairya Kohli: If you hand me over the amount requested I'll be able to vacate your house otherwise i wont be able to

06:07-Dhairya Kohli: I don't want to bother you anymore neither i want to be bothered anymore by you, so let's please close this I m attaching copy of cheque you'll find the details

04/05/2022, 06:07-Dhairya Kohli: IMG-20220503-WA0003.jpg (file attached)

05/05/2022, 16:44 - Dhairya Kohli: Hi Dhairya, please let me know the payment status.. If done please share the screenshot.

Thanks”

5.3 Order XII Rule 6 of the Code of Civil Procedure reads as under :-

"6. Judgment on admission. - (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 part or of its own motion and without waiting for the determination of any other question between the parties, make such order or given 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."

5.4 In **Charanjit Lal Mehra v. Kamal Saroj Mahajan**
AIR 2005 SUPREME COURT 2765 the Hon'ble Supreme Court held:

*".....In fact, Order XII, Rule 6, C.P.C. is enacted for the purpose of and in order to expedite the trials 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; then, in such a case in order to expedite and dispose of the matter such admission can be acted upon.In this connection, a reference may be made to a decision of this Court in the case of **Uttam Singh Duggal and Co. Ltd. v. United Bank of India and others**, reported in 2000 (7) SCC 120. Their Lordships have held as follows:*

"In the Objects and Reasons set out while amending Rule 6 of Order 12, CPC 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."

5.5 Order XII Rule 6 CPC confers very wide powers on the Court, to pronounce judgment on admission at any stage of the proceedings. The admission may have been made either in pleadings, or otherwise. The admission may have been made orally or in writing. The Court can act on such admission, either on an application of any party or on its own motion without determining the other questions. This provision is discretionary, which has to be exercised on well-established principles.

Admission must be clear and unequivocal, it must be taken as a whole and it is not permissible to rely on a part of the admission ignoring the other part. Even a constructive admission firmly made can be made the basis of passing appropriate orders. Even in the absence of written statement (same being not taken on record) the arguments raised by Ld. Counsel for the defendant, as discussed above, the emphasis laid on the documents filed by the defendant especially the chats coupled with other material on record contains enough admissions on the part of the defendant which merit exercising power under Order XII Rule 6 CPC by this court. {*Rama Devi Vs. Punam Chand Aggarwal 2008 (4) Civil Court Cases 701 (Delhi)*, *Surjit Sachdev v/s Kazakhstan Investment Services Pvt. Ltd. & Others 66 (1997) DLT 54 (DB)* and *PPA Impex Vs. Mangal Sain Mittal 166 (2010) DLT 84 (DB)*}

5.6 Reliance in this regard may also be placed upon the law laid down in *Earthtech Enterprises Vs. Kuljit Singh Butalia 199 (2013) DLT 194* it was held as under:

15.....Admission is categorical, unequivocal and unambiguous and can be inferred from the pleadings coupled with the documents and makes the appellant entitled to a judgment on admission, thus, trial court has rightly passed a decree of possession in favour of the respondent. In Uttam Singh Duggal (supra), in the context of Order 12 Rule 6 of the Code, Supreme Court has held thus "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 the 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. In Charanjit Lal Mehra (supra), similar view has been expressed, inasmuch as, it has been held that any admission can be inferred from the facts and circumstances of the case without any dispute, then, in such a case in order to expedite and dispose of the matter such admission can be acted upon. In Surjit Sachdev v/s Kazakhstan Investment Services Pvt. Ltd. & Others 66 (1997) DLT 54 (DB), this Court has held that admission need not be made expressly in the pleadings. Even on constructive admission Court can proceed to pass a decree in plaintiff's favour.

5.7 In PPA Impex Vs. Mangal Sain Mittal 166 (2010)

DLT 84 (DB) it was held as under:-

“7. So far as the case relating to Order XII Rule 6 is concerned, the Supreme Court has recommended resort to this provision to bring a quick end wherever a vexatious and false defence has been presented. The following paragraph from Charanjit Lal Mehra -vs- Kamal Saroj Mahajan, AIR 2005 SC 2765 is reproduced for facility of reference:-

....In fact, Order XII Rule 8, C.P.C. is enacted for the purpose of and in order to expedite the trials if there is any admission on behalf of the defendants or an admission can be interred from the facts and circumstances of the case without any dispute; then, in such a case in order to expedite and dispose of the matter such admission can be acted upon.....

.....9. It appears to us that the approach to be taken under Order XII Rule 6 is akin to what has been enunciated by the Supreme Court in Mechalac Engineers & Manufacturers -vs- Basic Equipment Corporation, (1976) 4 SCC 687 in the context of Order XXXVII of the CPC with regard to granting Leave to Defend a summary suit. This is that if a defence amounting to moonshine has been presented, it should be summarily dismissed by not granting Leave to Defend and by decreeing the suit forthwith. The Courts are already groaning

under the weight of bludgeoning and exponentially increasing litigation. The weight will unvaryingly increase if moonshine defences are needlessly permitted to go to Trial.....”

5.8 It is the plaintiff's case that the tenancy stood terminated not only on account of efflux of time but vide notice dated 07.10.2022 the defendant was asked to vacate the suit property. Furthermore the law is well settled that filing of the suit is itself sufficient notice for termination of tenancy. It was held by the Hon'ble High Court of Delhi in **Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha (HUF) reported as 183 (2011) DLT 712** that :

“.....7 (ii). The Supreme Court in the case of Nopany Investments (P) Ltd. Vs. Santokh Singh (HUF), 146 (2008) DLT 217 (SC)=1 (2008) SLT 195=2008 (2) SCC 728 has held that the tenancy would stand terminated under the general law on filing of a suit for eviction. Accordingly, in view of the decision in the case of Nopany (Supra) I hold that even assuming the notice termination tenancy was not served upon the appellant (though it has been served and as held by me above) the tenancy would stand terminated on filing of the subject suit against the appellant/defendant.

.....8. Therefore, looking at it from any point i.e. the fact that legal notice termination tenancy was in fact served, the suit plaint itself can be taken as a notice terminating tenancy or that the copy of the notice along with documents was duly served to the appellant/tenant way back in the year 2007, I hold that the tenancy of the appellant/tenant stands terminated and the appellant/tenant is liable to hand over the possession of the tenanted premises.....”

5.9 Upon the termination of the tenancy, use, occupation and possession of the suit property by the defendant becomes unlawful and unauthorized. He is liable to hand over the vacant

and peaceful possession of the suit property to the plaintiff. Reliance may be placed upon the law laid down in *Shyam Sharan Vs. Sheoji bhai & Anr (1977) 4 SCC 393, M/s. Raptakos Brett & Co. Ltd. v. Ganesh Property AIR 1998 SC 3085 and C. Albert Morris v. K. Chandrasekaran (2006) 1 SCC 228.*

5.10 The relationship of landlord and tenant being admitted, the tenancy having expired by efflux of time, law being settled that filing of the suit is itself sufficient notice of termination of tenancy, this is a fit case wherein the court should exercise its power, under Order XII Rule 6 CPC, so as to put an end to the illegality, unlawful act of occupation of the suit property by the defendant as well as of causing wrongful gain to himself and wrongful loss to the plaintiff. As discussed above, the defendant's act tantamount to extortion and bullying of a senior citizen who is around 84 years old. This is a very sorry state of affairs and one which needs to be deprecated. Here is the tenant/defendant who is not only not paying the rent and is utilizing the suit property for the last more than one year, without paying a single penny but look at his audacity, he is demanding his landlord/a senior citizen a sum of Rs. 1.4 lacs to vacate the suit property. Things cannot get worse and society cannot stoop any further lower level.

5.11 Plaintiff deserves the possession of the suit property. Atleast once the property is vacated, the plaintiff, can let out the same to meet out his financial requirements, daily needs at this juncture of his life.

5.12 Therefore in view of above discussion, suit of the plaintiff stands partially decreed for the relief of possession. Defendant is liable to hand over the vacant and peaceful possession of the suit property to the plaintiff. He is accordingly directed to hand over the vacant and peaceful possession of the suit property to the plaintiff within 30 days from today.

5.13 Decree sheet be prepared accordingly.

Renotify the matter for exparte plaintiff's evidence now on 12.01.2024.

(Gaurav Rao)

ADJ-03/ New Delhi District,
Patiala House Courts, Delhi.
20.10.2023