

T.S. - 384/19 CNR – WBCC01-000007-2019

Present: Sri Jayanta Koley, Judge, Bench-II. (WB00562)

Order 63

29.08.23

Today is fixed for hearing the application filed by the plaintiffs u/o 12 Rule 6 read with section 151 CPC dtd 10.1.23.

Both the sides file hazira. Heard the Ld. Advocates for both the sides at length.

Perused the application, whereby the plaintiffs have prayed for passing judgment on admission against the defendant for his eviction from the suit premises and recovery of khas possession thereof from him on the grounds that the he has no defence to their claim made in the plaint as it is the admitted position that his mother, namely, Nalini J.Sanghavi, since deceased, was the original recorded tenant under the plaintiffs in respect of the suit premises and since her death on 26.12.17 the defendant is in wrongful occupation of the suit premises as a trespasser in the absence of any plea in his written statement that he was dependent upon his mother during her lifetime when she used to carry on business in the suit premises and as such the defendant has no protection against eviction in terms of the provisions of section 2(g) of WBPT Act 1997.

The defendant has resisted and contested the said application by filing a written objection denying all the material allegations contained therein and has prayed for rejection of the same mainly on the ground that the plaintiffs have accepted rent from him by issuance of rent receipt while the plaintiffs have suppressed the material fact of transferring the share of plaintiff no 2 in the suit holding in favour of one Moaz Ahmed by a registered Deed of Conveyance dtd 31.1.22 as well as the fact of issuance of a letter of attornment dtd 16.11.22 by the plaintiff no 2 admitting the defendant to be a tenant under him in respect of the suit premises apart from informing him about the said transfer requesting the defendant to become a tenant directly under the said purchaser.

It appears from the record that the instant suit has been filed by the plaintiffs against the defendant praying for recovery of khas possession of the suit premises by evicting the defendant therefrom together with other consequential reliefs on the ground that though the mother of the defendant was the original recorded tenant in respect of the suit premises under the plaintiffs but after her death, the right of tenancy has extinguished by operation of law and the defendant's occupation in the suit premises has become illegal and wrongful.

The defendant is contesting the suit by filing a written statement denying all the material allegations contained in the plaint and has prayed for dismissal of the suit mainly on the ground that he is a bona fide monthly tenant in respect of the suit premises under the plaintiffs as he has paid rent in respect of the suit premises to the plaintiffs in his name against rent receipts issued in his favour by the plaintiffs.

From the respective pleadings of the parties the admitted fact appears to be that the mother of the defendant was the original recorded tenant in respect of the suit premises and she died on 26.12.17. There is also no dispute between the parties that the business, which was being run by the mother of the defendant in the suit premises, is now being run by the defendant himself by taking trade licence in his name from KMC authority as well as by obtaining electricity and telephone connection in the suit premises in his name.

Despite the aforesaid admitted position, I find that the defendant has nowhere admitted the plaint case to the effect that after the demise of his mother he is occupying the suit premises without any authority. On the other hand, it is his specific defence that he has paid rent in favour of the plaintiffs up to the month of May 2018 against issuance of rent receipts in his name by the plaintiffs. The plaintiffs themselves have stated in paragraph 4 of the plaint that such a rent receipt was really procured by the defendant from them in his name in respect of the suit premises though the plaintiffs have made out a case that such receipt is illegal and invalid in view of absence of any letter of surrender of tenancy at the instance of the mother of the defendant. Even it appears that the plaintiff no 2, in his letter dtd 16.11.22 addressed to the defendant, has categorically acknowledged the defendant to be a tenant in respect of the suit premises for which he issued the same by way of attornment requesting the defendant to become tenant under the purchaser to whom the plaintiff no 2 has transferred his share in the suit property.

Now Order 12 Rule 6 CPC runs as follows :-

1. Where the 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 said judgment was pronounced.

In the above perspective it is obvious that in order to pass a judgment on admission, the defendant has to make clear and unequivocal admission of the plaint case. The pleading or a document has to be construed as a whole to see its effect and one or two lines cannot be permitted to be taken out of context and used as an admission. It is an accepted norm that the pleadings must be read in their entirety or at least in a manner which would not frustrate the very claim of the party raised in the pleadings. In the present instance, when the defendant has made out a specific defence of acquiring tenancy right in the suit premises under the plaintiffs on the strength of reliable documents, I am of the view that the plaintiffs have practically no case at all in their favour to seek for delivering judgment on admission.

From the aforesaid findings it is quite evident that the defendant has nowhere made any admission to attract the provisions of order 12 Rule 6 CPC in the facts and circumstances of this suit. Accordingly, I have no doubt in my mind to hold that the instant application filed by the plaintiffs is practically devoid of any merit and does not call for any favourable response.

Hence it is

Ordered

that the application of the plaintiffs dtd 10.1.23 u/o 12 Rue 6 read with section 151 CPC is hereby rejected on contest.

Fix 16.10.23 for P.hearing of this suit.

D/C by me

Judge 2nd Bench

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